SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 153.

THE UNITED STATES, APPELLANT,

vs.

JAMES STINSON AND HENRY J. STINSON, AND MICHAEL S. BRIGHT AS RECEIVER OF JAMES STINSON.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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a In the United States circuit court of appeals for the seventh circuit. October term, A. D. 1900.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON AND HENRY G. STINSON, AND Michael S. Bright, as receiver of James Stinson, appellees. } No. 829.

Mr. William G. Wheeler, Mr. Henry S. Sheldon, Mr. John B. Simmons, counsel for appellant.

Mr. John C. Spooner, Mr. A. L. Sanborn, Mr. Robert M. Bashford, Mr. Michael S. Bright, counsel for appellees.

Appeal from the circuit court of the United States for the western district of Wisconsin.

1 *Placita.*

Circuit court of the United States for the western district of Wisconsin.

At the term of the circuit court of the United States of America for the western district of Wisconsin, begun and held at the city on Madison in said district, on the 1st Tuesday of December, A. D. 1900.

BUNN, J.

2 *Bill of complaint; filed Feb. 25, 1895.*

Among other, the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS. } In equity.

Be it remembered, that heretofore, to wit: On the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-five came the United States of America by its solicitors, Richard Olney, Attorney-General of the United States; Harry E. Briggs, U. S. attorney, western district of Wisconsin; and James G. Flanders, special assistant U. S. attorney, and filed in the office of the clerk of the circuit court of the United States for the western district of Wisconsin its bill of complaint, as follows:

Circuit court of the United States for the western district of Wisconsin, in the seventh circuit.

To the judges of the circuit court of the United States for the western district of Wisconsin, in the seventh circuit:

The United States of America, by their Attorney-General, bring this their bill against James Stinson, a resident of the city of Chicago, in the State of Illinois, but an alien, and against Henry J. Stinson, a resident of the city of Chicago, in the State of Illinois.

Your orators complain and say that the defendant, James Stinson, being an alien, a subject of the Queen of Great Britain and Ireland, and not by law entitled to preempt any of the public lands of your orators, but contriving and intending to cheat and defraud your orators out of their title in and to certain of their public lands situated in said district, hereinafter particularly described, and obtain the same himself, heretofore advanced and paid all the money and expenses necessary for so doing, and employed, hired, caused, and procured certain persons, to wit: John Johnson, Loranz Johnson, Sven Larson, Peter Norelle, Andrew Svenson, Aaron Peterson, Israel Johnson, Ole Westerland, Martin Larson, Andrew Walmark, Otto Walmark, Gustoff Johnson, John Johnson, and Sven Magnuson, severally, by and under his direction, control, and management, to fraudulently preempt, enter, and procure patents from
3 your orators, of the several portions thereof, hereinafter particularly described, and in the aggregate the whole thereof, and obtain from your orators the legal title to all said described lands, which title the defendant, James Stinson, afterwards caused and procured said persons to severally convey to and invest in himself; whereby the defendant, James Stinson, fraudulently caused and procured to be conveyed to and invested in himself the legal title in and to all the said described lands and premises, and all of which he now holds.

That under such employment, hiring, direction, and control the first said John Johnson so entered the northwest quarter of section twenty-six (26), in township forty-nine (49), north of range fourteen (14), west of the fourth principal meridian, in Douglas County, Wisconsin, on the 24th day of October, A. D. 1854.

That at a proper time as required by law before so entering the same, the first said Johnson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district, wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore, made a settlement thereon in person, and declared his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district, that he had made such settlement in person, upon the last said lands, and inhabited and improved the same and erected a dwelling house thereon, and continued to reside thereon, ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof, as were necessary and required to authorize and entitle him then to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same

to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner, with any person whatsoever, by which the title which he might acquire thereto from your orators, should inure in whole or in part to the benefit of any person except himself.

4 That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the first said John Johnson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses; that the first said John Johnson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the first said John Johnson, to the satisfaction of the register and receiver of said land district, agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the first said John Johnson, and he with moneys of the defendant James Stinson, and by his direction then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof, and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the first said John Johnson, his heirs and assigns forever, and upon which patent certificate your orators afterwards in due time issued such a patent to him, the first said John Johnson.

That upon the said 24th day of October, A. D. 1854, by direction of the defendant, James Stinson, the first said John Johnson by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said land so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County in Book "A" on page 225.

That under such employment, hiring, direction, and control the said Lorenz Johnson so entered the northwest quarter of section thirty-three (33), of said township and range, on the said 24th day of October, A. D. 1854.

That at a proper time as required by law before so entering the same, the said Lorenz Johnson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person and declaring his intention to claim the same under the

5 preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon he

falsely and fraudulently made oath and affidavit before the receiver or register of said land district, that he had made such settlement in person, upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon, ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as were necessary and required to authorize and entitle him then to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators, in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said *said* lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Lorenz Johnson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses, that the said Lorenz Johnson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Lorenz Johnson, to the satisfaction of the register and receiver of said land district agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the said Lorenz Johnson, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof, and was entitled to a patent from your orators granting and conveying the last said lands unto him, the said Lorenz Johnson,
6 his heirs and assigns forever, upon which patent certificate your orators afterwards, in due time issued such a patent to him, the said Lorenz Johnson.

That upon the said 24th day of October, A. D. 1854, by direction of the defendant, James Stinson, the said Lorenz Johnson, by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said land, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County, in Book "A," on page 226.

That under such employment, hiring, direction, and control the said Sven Larson, so entered the northwest quarter of section thirty-five (35) of said township and range, on the said 24th day of October, A. D. 1854.

That at a proper time, as required by law, before so entering the same, the said Sven Larson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district, that he had made such settlement in person, upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside hereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as were necessary and required to authorize and entitle him then to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

7 That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Sven Larson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses, that the said Sven Larson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver and made false and fraudulent proofs of such settlement and improvement thereof, by the said Sven Larson, to the satisfaction of the register and receiver of said land district, agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statement, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the said Sven Larson, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon made and issued to him a patent certificate, showing that he had so paid such price thereof, and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Sven Larson, his heirs and assigns

forever, upon which patent certificate your orators afterwards, in due time, issued such a patent to him, the said Sven Larson.

That upon the said 24th day of October, A. D. 1854, by direction of the defendant, James Stinson, the said Sven Larson by deed granted and conveyed to, and vested in, the defendant, James Stinson, all the right, title, and interest, in and to the last said land so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County in book "A" on page 222.

That under such employment, hiring, direction, and control the said Peter Norelle so entered the southwest quarter of section thirty-five (35) of said township and range, on said 24th day of October, A. D. 1854.

That, at a proper time as required by law before so entering the same, the said Peter Norelle, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to pre-
8 empt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of such land district that he had made such settlement in person, upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion as were necessary and required to authorize and entitle him then to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any manner with any person whatsoever, by which the title he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the said defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oaths of the said Peter Norelle, made as aforesaid, procured the false and fraudulent affidavits of other witnesses, that the said Peter Norelle had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Peter Norelle to the satisfaction of the register and receiver of said land district, agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the said Peter Norelle, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said pre-emption claim thereto, and said register and receiver thereupon made and issued to him a patent certificate, showing that he had so paid such price thereof, and was entitled to a patent from your orators granting and conveying the last said lands unto him, the said Peter Norelle, his heirs and assigns forever, upon which patent certificate your orators afterwards, in due time, issued such a patent to him, the said Peter Norelle.

9 That upon the said 24th day of October, A. D. 1854, by direction of the defendant, James Stinson, the said Peter Norelle by deed granted and conveyed to and invested in the defendant, James Stinson, all the rights, title, and interest in and to the last said land, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County, in Book "A," on page 223.

That under such employment, hiring, direction, and control the said Andrew Svenson so entered the southwest quarter of section twenty-eight (28) of said township and range on the said 24th day of October, A. D. 1854.

That at a proper time as required by law before so entering the same, the said Andrew Svenson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same, and that within twelve months after such alleged settlement thereof he falsely and fraudulently made oath and affidavit before the receiver or register of such land district that he had made such settlement in person upon the last said lands and inhabited and improved the same and erected a dwelling house thereon and continued to reside thereon ever since making of such settlement, and cultivated a portion thereof, and that he had so resided thereon some time and so cultivated such a portion thereof as were necessary and required to authorize and entitle him to enter the same with the register of such land office upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever, by which the title he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corob-
10 oration of the statements and oath of said the Andrew Svenson made as aforesaid, procured the false and fraudulent affidavits of other witnesses that the said Andrew Svenson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Andrew Svenson, to the satisfaction of the register and receiver of said land district agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office and by them believed to be true, and thereupon the said receiver received from the said Andrew Svenson, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate, showing that he had so paid such price thereof and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Andrew Svenson, his heirs and assigns forever, upon which patent certificate your orators afterwards in due time issued such a patent to him, the said Andrew Svenson.

That upon the said 24th day of October, A. D. 1854, by direction of the defendant, James Stinson, the said Andrew Svenson by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said land, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County in Book "A," on page 221.

That under such employment, hiring, direction, and control the said Aaron Peterson so entered the northwest quarter of section five (5), in township forty-eight (48) north, of range thirteen (13) west, of the fourth principal meridian, in Douglas County, Wisconsin, on the 1st day of June, A. D. 1855.

That at a proper time, as required by law before so entering the same, the said Aaron Peterson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same, and that within twelve months after such
11 alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such settlement in person upon the last said lands and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon ever since the making of such settlement and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as were necessary and required to

authorize and entitle him then to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Aaron Peterson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses, that the said Aaron Peterson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Aaron Peterson, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office and by them believed to be true, and thereupon the said receiver received from the said Aaron Peterson, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate, showing that he had so paid such price thereof, and was entitled to a patent from your orators granting and conveying the last said lands unto him, the said Aaron Peterson, his heirs and assigns forever, upon which patent certificate your
12 orators afterwards, in due time, issued such a patent to him, the said Aaron Peterson.

That upon said first day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Aaron Peterson by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County, in Book "A," on page 453.

That under such employment, hiring, direction, and control the said Israel Johnson so entered the northeast quarter of section five (5) of the last said town and range on the 22nd day of June, A. D. 1855.

That at a proper time as required by law before so entering the same the said Israel Johnson, by and under such hiring, direction, and control in manner and form as required by law, filed in the land office of your orators at the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the

same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such a settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon and continued to reside thereon ever since the making of such settlement and cultivated a portion thereof, and that he had so resided thereon and so cultivated such a portion thereof as were necessary and required to authorize and entitle him then to enter the same with the register of such land office upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever, by which the title which he might acquire thereto, from your orators, should inure in whole or in part to the benefit of any person except himself.

13 That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Israel Johnson, made as aforesaid, procurred the false and fraudulent affidavits of other witnesses that the said Israel Johnson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver and made false and fraudulent proofs of such settlement and improvement thereof by the said Israel Johnson to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true; and thereupon the said receiver received from the said Israel Johnson, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver, the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto; and said register and receiver thereupon then made and issued to him a patent certificate, showing that he had so paid such price thereof, and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Israel Johnson, his heirs and assigns forever, upon which patent certificate your orators afterwards, in due time, issued such a patent to him, the said Israel Johnson.

That upon the 22nd day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Israel Johnson, by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County in book "A" on page 449.

That under such employment, hiring, direction, and control the said Ole Westerland so entered the northeast quarter of section four (4) of

the last said township and range on the said 22nd day of June, A. D. 1855.

That at a proper time as required by law before so entering the same, the said Ole Westerland, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and
14 such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon, ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such portion thereof as were necessary and required to authorize and entitle him then to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Ole Westerland, made as aforesaid, procured the false and fraudulent affidavits of other witnesses; that the said Ole Westerland had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Ole Westerland to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the said Ole Westerland, and he with moneys of the defendant James Stinson, and by his direction, then paid to said receiver, the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof, and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Ole Westerland,

his heirs and assigns forever; upon which patent certificate your
15 orators afterwards in due time, issued such a patent to him, the said Ole Westerland.

That upon the 22nd day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Ole Westerland, by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said land, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County in book "A" on page 450.

That under such employment, hiring, direction, and control the said Martin Larson so entered the northeast quarter of section six (6) of the last said township and range on the 1st day of June, A. D. 1855.

That at a proper time as required by law before so entering the same, the said Martin Larson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district, that he had made such settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof, as were necessary and required to authorize and entitle them to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators, should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procur-
16 ing such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Martin Larson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses that the said Martin Larson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Martin Larson, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the said Martin Larson, and he with moneys from the defendant, James Stinson, and by his direction then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof, and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Martin Larson, his heirs and assigns forever, upon which patent certificate your orators afterwards in due time issued such patent to him, the said Martin Larson.

That upon the said 1st day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Martin Larson, by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County on book "A" on page 458.

That under such employment, hiring, direction, and control the said Andrew Walmark so entered the northwest quarter of section four (4) of the last said township and range, on the 22nd day of June, A. D. 1855.

That at a proper time as required by law before so entering the same, the said Andrew Walmark, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators and such a declaratory statement as was necessary to give him a right to preempt the same; and that within
17 twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as were necessary and required to authorize and entitle him to enter the same with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Andrew Walmark, made as aforesaid, procured the false and fraudulent affidavits of other witnesses, that the said Andrew Walmark had so settled and resided upon and improved the said last lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Andrew Walmark, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office and by them believed to be true, and thereupon the said receiver received from the said Andrew Walmark, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof and was entitled to a patent from your orators granting and conveying the last said lands unto him, the said Andrew Walmark, his heirs, and assigns forever, upon which patent certificate your orators afterwards, in due time issued such a patent to him, the said Andrew Walmark.

18 That upon the said 22nd day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Andrew Walmark by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said land so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County, in Book "A," on pages 452–3.

That under such employment, hiring, direction, and control the said Otto Walmark so entered lots seven (7), eight (8), and nine (9), and the northwest quarter of the northeast quarter of section one (1) in township forty-eight (48), north of range fourteen (14), west of the fourth principal meridian, in Douglas County, Wisconsin, on the 22nd day of June, A. D. 1855.

That at a proper time as required by law before so entering the same the said Otto Walmark, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators, at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon, he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof,

and that he has so resided thereon such time and so cultivated such portion thereof as were necessary and required to authorize and entitled him then to enter the same with the register of such land office upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said land to sell the same on speculation, but in good faith and appropriate the same to his own exclusive use, and that he has not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might thereto from your orators should inure in whole or in part to the benefit of any person except himself.

19 That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Otto Walmark, made as aforesaid, procured the false and fraudulent affidavits of other witnesses that the said Otto Walmark had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Otto Walmark, to the satisfaction of the register and receiver of said district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office and by them believed to be true, and thereupon the said receiver received from the said Otto Walmark, and he with moneys of the defendant, James Stinson, and by his direction then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Otto Walmark, his heirs and assigns forever, upon which patent certificate your orators in due time issued such a patent to him, the said Otto Walmark.

That upon the said 22nd day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Otto Walmark by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County, in Book "A" on pages 448–9.

That under such employment, hiring, direction, and control, the said Gustoff Johnson so entered lots one (1), two (2), three (3), of section one (1), in the last said township and range, on said 22nd day of June, A. D. 1855.

That at a proper time as required by law before so entering the same, the said Gustoff Johnson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands,

and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person and declaring his intention to claim the same under the preemption laws of your orators,
20 and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon he falsely and fraudulently made oath and affidavit before the register or receiver of said land district that he had made such settlement in person upon the last said lands and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as *were* necessary and required to authorize and entitle him then to enter the same with the register of such land office upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Gustoff Johnson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses that the said Gustoff Johnson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Gustoff Johnson to the satisfaction of the register and receiver of said land district agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said receiver and register of said land office, and by them believed to be true, and thereupon the said receiver received from the said Gustoff Johnson, and he with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claim thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Gustoff Johnson, his heirs and assigns forever, upon which patent certificate your orators
21 afterwards, in due time, issued such a patent to him, the said Gustoff Johnson.

That upon the said 22nd day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Gustoff Johnson by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands so by him acquired, which

deed is recorded in the office of the register of deeds of said Douglas County in book "A" on page 455.

That under such employment, hiring, direction, and control the second John Johnson so entered the northwest quarter of section one (1) of the last said township and range on said 22nd day of June, A. D. 1855.

That at a proper time as required by law before so entering the same, the second said John Johnson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated, and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory statement as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereon he falsely and fraudulently made oath and affidavit, before the receiver or register of said land district, that he had made such a settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such portion thereof as were necessary and required to authorize and entitle him then to enter the same with the register of such land office upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring
22 such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the second said John Johnson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses that the second said John Johnson had so settled and resided upon and improved the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the second said John Johnson, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon the said receiver received from the second said John Johnson, and he with moneys of the defendant James Stinson, and by his direction then paid to said receiver the minimum price of the last

said lands, being the amount of money necessary to perfect his preemption claim thereto; and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof and was entitled to a patent from your orators granting and conveying the last said lands unto him, the second said John Johnson, his heirs and assigns forever, upon which patent certificate your orators afterwards, in due time, issued such a patent to him, the second said John Johnson.

That upon the said 22nd day of June, A. D. 1855, by direction of the defendant, James Stinson, the said second John Johnson by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County in book "A" on page 456.

That under such employment, hiring, direction, and control the said Sven Magnuson so entered the northeast quarter of section two (2) in the last said township and range on the said 1st day of June, A. D. 1855.

That at a proper time, as required by law, before so entering the same, the said Sven Magnuson, by and under such hiring, direction, and control, in manner and form as required by law, filed in the land office of your orators at , the same being the land office of the district wherein the last said lands were situated and the office where the same were subject to entry, a written statement describing the last said lands, and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the preemption laws of your orators, and such a declaratory state-
23 ment as was necessary to give him a right to preempt the same; and that within twelve months after such alleged settlement thereof he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such settlement in person upon the last said lands, and inhabited and improved the same, and erected a dwelling house thereon, and continued to reside thereon ever since the making of such settlement, and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as were necessary and required to authorize and entitle him then to enter the same, with the register of such land office, upon paying to your orators the minimum price thereof, and that he had never had the benefit of any right of preemption under the laws of your orators in reference thereto; that he was not the owner of three hundred and twenty (320) acres of land in any State or Territory; that he had not so settled upon and improved the last said lands to sell the same on speculation but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto, from your orators, should inure in whole or in part to the benefit of any person except himself.

That the defendant, James Stinson, for the purpose of procuring such entry of the last said lands, prior to such entry thereof, in corroboration of the statements and oath of the said Sven Magnuson, made as aforesaid, procured the false and fraudulent affidavits of other witnesses, that the said Sven Magnuson had so settled and resided upon and improved

the last said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the said Sven Magnuson, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by law and the Secretary of the Interior relative thereto.

That such false statements, oath, affidavits, and proofs were received by the said register and receiver of said land office and by them believed to be true, and thereupon the said receiver received from the said Sven Magnuson, and he, with moneys of the defendant, James Stinson, and by his direction, then paid to said receiver the minimum price of the last said lands, being the amount of money necessary to perfect his said preemption claims thereto, and said register and receiver thereupon then made and issued to him a patent certificate showing that he had so paid such price thereof and was entitled to a patent from your orators, granting and conveying the last said lands unto him, the said Sven
24 Magnuson, his heirs and assigns forever, upon which patent certificate your orator afterwards, in due time, issued such a patent to him, the said Sven Magnuson.

That upon the said first day of June, A. D. 1855, by direction of the defendant, James Stinson, the said Sven Magnuson by deed granted and conveyed to and vested in the defendant, James Stinson, all the right, title, and interest in and to the last said lands, so by him acquired, which deed is recorded in the office of the register of deeds of said Douglas County, in book "A," on page 459.

That each and every and all such statements, oaths, affidavits, and proofs so made, in and about such preemption and entry and patenting of said lands, and each and every tract and portion thereof, were false and fraudulent, and that the defendant, James Stinson, hired and procured the same to be made, and each and every of them, well knowing them to be so false and fraudulent.

That neither of said persons so entering the several portions of said lands had previously thereto so settled upon, inhabited, cultivated, improved, or resided upon such portion thereof so claimed and entered by him, and neither ever erected a dwelling thereon, and that neither of them so claimed, preempted, and entered upon such portions of said lands so claimed, preempted, and entered by them, respectively in good faith to appropriate the same to his own exclusive use, as the defendant, James Stinson, always well knew, but that each and every of them so claimed, preempted and entered and procured such patents to the same, and did every said act and thing by him done, relating thereto for hire paid him by the defendant, James Stinson, and as his servant and with the intent and under an agreement, contract, and understanding with the defendant, James Stinson, that the title which he should so acquire thereto from your orators should be so conveyed to the defendant, James Stinson, and inure to his benefit; and that each and every act and thing so done in and about such preemption, entry, and procuring of such patents by said persons so procuring the same respectively, was so done by them, and each and every of them, at the instance and request and by the procurement and direction of the defendant, James Stinson, and all the money so paid by them, and each and every of them, was the money of the defendant, James Stinson.

That said register and receiver and each and every of the land officers of your orators acting in the premises supposed and believed such false and fraudulent statements, oaths, affidavits, and proofs, and each and every of them, to be true, and were thereby deceived and misled into allowing such preemption of claims, and permitting such entries to be made, and the issuing of such patents, and each and every of them, to the great wrong and injury of your orators.

That each and every of said persons so employed and hired by
25 the defendant, James Stinson, to fraudulently preempt, enter, and obtain such patents to said several tracts of your orators' public lands were at the time of their being so hired, and the doing of said acts so done by them, recent immigrants to the United States from the continent of Europe, and did not understand the English language nor the laws of the United States relating to the preemption of their public lands, and they, and each and every of them, were deceived and misled by the defendant, James Stinson, into the doing of said acts, so done by them respectively, and each and every of them, in ignorance of the fact that the same were being done in violation of law.

That the facts aforesaid not of record, are known to, and can be established by the testimony of numerous reliable living witnesses, among whom are several of said persons, so hired by the defendant, James Stinson, who have since learned the English language, and are now prosperous and good and worthy citizens of the United States.

That the defendant, James Stinson, never made any improvements on said lands or any part of them, but has ever since so procuring such title thereto, left and permitted them, and the whole thereof, to be and remain wild, uncultivated, unproductive and unimproved; that said lands are situated in a long settled and improved portion of the State of Wisconsin, and but for such fraudulently procuring of your orators' said title thereto by the defendant, James Stinson, the same would have been long since actually and bona fidely settled upon, improved, inhabited, acquired, cultivated and made productive, under the public land laws of your orators, by citizens of your orators, lawfully entitled so to do; by reason of all which facts aforesaid your orators are greatly wronged and injured.

That your orators did not discover said fraud, or either or any of them until the year A. D. 1885, when a special agent of your orators' General Land Office, by direction of that office made investigation relative thereto and discovered and reported the same to your orators' said General Land Office.

That, as your orators are informed and verily believe, on the 19th day of March, 1894, the defendant James Stinson, and Sarah E. Stinson, his wife, made, executed, and delivered to Henry J. Stinson, the son of the parties last named, a warranty deed of and to the lands hereinbefore described, said deed being subject to all taxes then a lien upon said described real estate, and the consideration named in said deed being one million five hundred thousand dollars ($1,500,000), which said deed was recorded in the office of the Register of Deeds for Douglas County, Wisconsin, on the 21st day of March, 1894, in Volume 53 of Deeds, on
page 434; that in fact no consideration whatever was paid by
26 the said Henry J. Stinson for the said conveyance so as aforesaid made to him, and that in fact no consideration was received by

the defendant James Stinson, or Sarah E. Stinson, his wife, for the conveyance so made; that the said defendant Henry J. Stinson, at the time of the conveyance so made to him, had knowledge of all the facts herein stated, and well knew that in fact and in truth his father, James Stinson, had acquired and held the legal title to said lands in fraud of your orators.

Your orators further allege on information and belief, that the said conveyance so made to the said Henry J. Stinson, was made for the express purpose of hindering, delaying, and defrauding your orators of their rights in and to said lands, and impeding the prosecution of this action for the recovery thereof, and that with the same purpose and end in view, on the said 19th day of March, A. D. 1894, the said Henry J. Stinson executed and delivered to said James Stinson mortgages upon the several tracts of land hereinbefore described, purporting to secure a pretended indebtedness from said Henry J. Stinson to said James Stinson, aggregating about $1,500,000, the amount named as such consideration in the deed hereinbefore described, and that the said mortgages were received for record and recorded in the office of the Register of Deeds of Douglas County, in the State of Wisconsin, at divers and sundry dates intermediate the 19th day of March, 1894, and the commencement of the above entitled action, and are now of record therein.

On information and belief your orators further allege that accompanying the said mortgages so executed by said Henry J. Stinson and delivered to said James Stinson, were notes or obligations of said Henry J. Stinson, purporting to be secured by said mortgages, of divers and sundry amounts aggregating about $1,500,000, the amount named in the deed hereinbefore described, which said notes or obligations were, at or about the date of the execution of said mortgages and of said notes or obligations, executed by said Henry J. Stinson and delivered to said James Stinson, and that said notes and obligations are now in the possession, custody, or control of said James Stinson.

Wherefore, your orators pray the judgment and decree of this court that said patent, certificates, and entries of said lands, and said patent so issued as aforesaid, and each and every of them, and the said deeds to James Stinson and said deeds from James Stinson and Sarah E. Stinson, his wife, to Henry J. Stinson, and the said notes and mortgages executed by Henry J. Stinson to James Stinson and each and every of them, be delivered up to be cancelled, and cancelled, set aside, and annulled, and that until the further order of this court, the said defendants James Stinson and Henry J. Stinson and their and each of their agents, attorneys, trustees, and servants, be enjoined and restrained from selling, conveying, disposing of or in any manner encumbering the said described
27 lands and premises or any part or portion thereof, and that the said defendant James Stinson, be enjoined and restrained from assigning, transferring, negotiating, or delivering any of said notes and mortgages executed to him by the said defendant Henry J. Stinson, and from in any manner parting with the possession, custody, or control thereof, and that the defendants pay the costs of this action, and that your orators may have such other and further relief in the premises as the nature of the circumstances of this action may require and to this honorable court shall seem just.

And may it please your honors to grant unto your orators the writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors according to the form of the statute in such case made and provided, and directed to the said defendants, James Stinson and Henry J. Stinson, and their and each of their agents, attorneys, trustees, and servants, and each and every of them, commanding, enjoining, and restraining them and each and every of them from selling, conveying, disposing of, or in any manner encumbering the said described lands and premises or any part or portion thereof, pending this suit, and commanding, enjoining, and restraining the defendant, James Stinson, and his agents, attorneys, trustees, and servants, and each and every of them, from assigning, transferring, negotiating, or delivering the said notes and mortgages executed by the defendant Henry J. Stinson to the said James Stinson, and commanding, enjoining, and restraining him, the said defendant James Stinson, from in any manner parting with or changing his custody, possession, and control of said notes and mortgages, and that a temporary restraining order be granted to the like effect until the decision of your orators' motion for such injunction.

And may it please your honors to grant unto your orators a writ of subpœna of the United States of America issuing out of and under the seal of this honorable court, directed to the said James Stinson and the said Henry J. Stinson, defendants, commanding them on a day certain therein to be named and under a certain penalty to be and appear in this honorable court then and there to answer all and singular the premises, and to stand by, perform, and abide by such further order, direction, or decree as may be made against him.

And your orators, as in duty bound, will ever pray, etc.

RICHARD OLNEY,
Attorney-General of the United States, Complainants' Solicitor.

HARRY E. BRIGGS,
U. S. Attorney, Western District of Wisconsin.

JAMES G. FLANDERS,
Local Solicitor for Complainants, and of Counsel.

28 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

Harry E. Briggs, being first duly sworn, on oath says that he is the United States attorney for said district; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true, as he is informed and verily believes; that the grounds of such belief are abstracts of the records and files of the Land Office in said bill of complaint mentioned and of the General Land Office of the complainants, and of the office of the register of deeds of Douglas County, Wisconsin, as to the facts and papers of record on file and the pleadings and records in an action heretofore brought in this court wherein the complainants in this action are complainants, and one of the defendants in this action, James Stinson, is defendant, and the reports of the special agents of the General Land Office, who investigated and reported as to the facts not of record therein stated, and affidavits of witnesses purporting to be made upon personal knowledge of said facts, not of record,

whom affiant is informed are reliable and truthful, and upon other trustworthy sources.

And further affiant sayeth not.

HARRY E. BRIGGS.

Subscribed and sworn to before me this 12th day of February, 1895.

[L. S.] F. M. STEWART,
Clk. Cir. Ct. West. Dist. of Wis.

(Endorsed:) Chan. No. 279 B. P., 492. United State circuit court for the western district of Wisconsin. The United States of America, Plaintiff, vs. James Stinson and Henry J. Stinson, defendants. Bill of complaint. Filed Feby. 25th, 1895. F. M. Stewart, Clk.

Subpœna, issued Feb. 25, 1895.

Whereupon on same day, to wit, February 25, 1895, subpœna issued as follows:

THE UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

The President of the United States of America to James Stinson and Henry J. Stinson, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the
29 western district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of April next ensuing, at Madison, to answer to a bill of complaint exhibited against you in our said court, by the United States of America.

And to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said James Stinson and Henry J. Stinson if to be found in his district, and due return thereof make.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Madison, in the said district, this 25th day of Feby., in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the one hundred and nineteenth.

[L. S.] F. M. STEWART, *Clerk.*

RICHARD OLNEY,
Coplts. Solicitor.
HARRY E. BRIGGS,
U. S. Attorney, &
JAMES G. FLANDERS,
Local Solicitors & of Counsel for the Complainant.

It is ordered by our said court that the said defendants aforesaid do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

F. M. STEWART, *Clerk.*

Return to subpœna, filed Feb. 27, 1895.

Afterwards said subpœna was returned as follows:

After making diligent search and inquiry, I have been unable to find either of the defendants herein in my district on whom to serve the within subpœna, and from information and belief they are not residents of the State of Wisconsin. I return this subpœna not served. Feby. 27, 1895.

F. W. OAKLEY, *U. S. M.*

(Endorsed:) No. 279 Chancery B., page 492. United States vs. James Stinson & Henry J. Stinson. Subpœna. Filed Feby. 27, 1895. F. M. Steward, clk.

30 *Appearance for defendants, filed March 1, 1895.*

Afterwards, to wit, March 1, 1895, came Messrs. Spooner, Sanborn, Kerr & Spooner, and filed their appearance as solicitors for the defendants, James Stinson and Henry J. Stinson, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The clerk of said court will please enter our appearance as solicitors for both of the defendants above named.

Dated March 1, 1895.

SPOONER, SANBORN, KERR & SPOONER,
Solicitors for Defendants.

(Endorsed:) 279. Circuit court of the United States, western district of Wisconsin. United States of America, complt., vs. James Stinson et al., defts. Notice of appearance. Filed March 1, 1895. F. M. Stewart, clk.

Answer of James Stinson, filed March 9, 1895.

Afterwards, to wit, March 9, 1895, came the solicitors for the defendant James Stinson and filed his answer, as follows, to wit:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The several answer of James Stinson, one of the defendants herein, to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors and other imperfections in the
31 said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such part thereof as this defendant

is advised is or are material or necessary for him to make answer unto, this defendant answering says, that he is not an alien, but a citizen of the United States, and resides in the city of Chicago, in the State of Illinois.

He denies that he employed, hired, caused, and procured John Johnson, Loranz Johnson, Sven Larson, Peter Norelle, Andrew Svenson, Aaron Peterson, Israel Johnson, Ole Westerland, Martin Larson, Andrew Walmark, Otto Walmark, Gustoff Johnson, John Johnson, and Sven Magnuson, or any or either of them, to preempt, enter, and procure patents for the tracts of lands described in the bill, or any or either of them; and he denies that he employed or procured the said named persons, or any or either of them, to obtain from the complainant the legal title to the tracts of land described in the bill, or any or either of them; and he denies that he caused and procured said persons to severally convey to and invest in himself for any fraudulent purpose whatever the said several tracts of land; and he expressly denies that he contrived any scheme or plan to cheat and defraud the complainant out of its title in and to the said tracts of land described in the bill, or any of them, or either of them.

This defendant, further answering, admits that the person named in the bill as the first John Johnson entered the northwest quarter of section twenty-six (26), in township forty-nine (49) north, of range fourteen (14) west of the fourth principal meridian, in Douglas County, Wisconsin, on the 24th day of October, 1854; but he denies that such entry was made under the employment, hire, direction or control of this defendant.

This defendant, upon information and belief, admits that the first said John Johnson presented to the officers of the proper land office certain papers and affidavits to enable him to make such entry, for the purpose of complying with the acts of Congress regulating preemption claims and the entry of public lands; and this defendant says, upon information and belief, that the said papers and affidavits were received by the register and receiver of said land office and accepted as sufficient to enable the first said John Johnson to enter the said quarter section of land, and that such register and receiver issued to him a patent certificate showing that he had paid the price therefor, and was entitled to a patent therefor, and that upon such certificate the complainant on the first day of July, 1857, issued a patent for said tract of land for and in the name of the first said John Johnson. But this defendant denies that the said John Johnson presented the said papers and affidavits to said land officers by and under the employment, hiring, direction and control of this
32 defendant; and he denies that he, prior to such entry, in corroboration of the statements and oath of the said John Johnson, procured false and fraudulent affidavits of other witnesses, as alleged in said bill of complaint; and upon like information and belief he further denies that the statements and affidavits presented to said land officers by the said John Johnson, to enable him to make entry of said tract of land, were fraudulent and false.

This defendant, further answering, admits that the person named in said bill of complaint as the first John Johnson did execute a warranty deed, bearing date October 24, 1854, for the consideration of two hundred and seventy-five dollars, conveying to this defendant the said northwest quarter of section twenty-six, in township forty-nine north, of range

fourteen west of the fourth principal meridian, in Douglas County, Wisconsin, which deed was recorded in the office of the register of deeds of said Douglas County on the 12th day of April, 1855.

This defendant, further answering the bill of complaint, admits that Lorenz Johnson entered the northwest quarter of section thirty-three (33) of said township and range on the 24th day of October, 1854, but he denies that such entry was made under the employment, hiring, direction or control of this defendant.

This defendant admits, upon information and belief, that the said Loranz Johnson, for the purpose of entering the said quarter section of land, presented to the register and receiver of the proper land office statements and affidavits to show that he was entitled to enter the same under and according to the provisions of the preemption laws of the United States, and that such statements and affidavits were received by the land officers, and that there was then issued to the said Loranz Johnson a certificate showing that he had paid the purchase price therefor, and was entitled to a patent granting and conveying said lands to him, his heirs and assigns; that upon such certificate a patent was issued to him on the 15th day of December, 1855; and he admits that the said Loranz Johnson executed a deed dated on the 24th day of October, 1854, for a consideration of two hundred and fifty dollars, conveying to this defendant the said tract of land, which was recorded in the office of the register of deeds of said Douglas County on the 12th day of April, 1855. But this defendant denies that the said Loranz Johnson presented the said statements and affidavits, or any of them, by and under the hiring, direction or control of this defendant, and he denies that he procured, in corroboration of such statements and the oath of said Loranz Johnson, any affidavits of other witnesses; and upon information and belief this defendant denies that said statements or affidavits, so presented to the
33 register and receiver, or any of them, contained false and fraudulent statements; but, on the contrary, he avers, upon the like information and belief, that the statements therein contained were true.

This defendant, further answering, admits that Sven Larson entered the northwest quarter of section thirty-five (35) of said township and range on the 24th day of October, 1854; but he denies that such entry was made under the employment, hiring, direction, or control of this defendant; and he admits that on the 24th day of October, 1854, the said Sven Larson executed a warranty deed to him for a consideration of two hundred and sixty dollars, by which there was conveyed the last-named tract of land, which deed was recorded on the 12th day of April, 1855, in the office of the register of deeds of said Douglas County; and this defendant admits that the said Sven Larson presented certain statements and affidavits to the register and and receiver of the proper land office, for the purpose of showing a compliance with the preemption laws of the United States, and that he was entitled to enter said tract of land, and that said register and receiver issued to him a patent certificate, showing that he had paid the price therefor and was entitled to a patent, and that such patent was issued to the said Sven Larson, his heirs and assigns, on the 15th day of December, 1855; but this defendant denies that such statements and affidavits were presented by or under the hiring, direction, or control of this defendant, and he denies that he procured the

making of any such statements or affidavits, and, upon information and belief, he denies that the said statements and affidavits were false or fraudulent.

This defendant, further answering, admits that Peter Norelle entered the southwest quarter of section thirty-five (35) of said township and range on the 24th day of October, 1854, and that on the same day the said Peter Norelle executed a warranty deed to this defendant, for a consideration of two hundred and fifty dollars, conveying the said tract of land to him, which deed was recorded in the office of the register of deeds of said Douglas County on the 12th day of April, 1855; but this defendant denies that the said Peter Norelle entered said tract of land under the employment, hiring, direction, or control of this defendant.

And this defendant admits, upon information and belief, that the said Peter Norelle presented certain statements and affidavits to the register and receiver of the proper land office, for the purpose of showing that he was entitled under the preemption laws of the United States to make entry of the said tract of land, and that the register and receiver received the same, and issued to him a patent certificate, showing that he had paid the price therefor and was entitled to a patent granting and
34 conveying the same unto him, his heirs and assigns, and that afterwards upon such patent certificate a patent was issued to him, his heirs and assigns, on the 15th day of December, 1855.

But this defendant denies that such statements and affidavits were procured, obtained, or presented under any hiring, direction, or control of this defendant, and he denies that for the purp se of procuring such entry, and in corroboration of the statements and oath of the said Peter Norelle, he procured any false or fraudulent affidavits of other witnesses; and, upon information and belief, this defendant denies that the statements and affidavits so presented by the said Peter Norelle to the said register and receiver were false and fraudulent. This defendant, further answering, admits that Andrew Svenson entered the southwest quarter of section twenty-eight (28) of said township and range on the 24th day of October, 1854, and that he conveyed the same by a warranty deed on the same day to this defendant, for a consideration of two hundred and seventy dollars, which deed was recorded in the office of the register of deeds of said Douglas County on the 12th day of April, 1855; but this defendant denies that the said Andrew Svenson entered the said tract of land under any employment, hiring, direction, or control of this defendant.

This defendant, further answering, admits that the said Andrew Svenson presented to the register and receiver of the proper land office certain written statements and affidavits for the purpose of showing a compliance with the acts of Congress allowing preemption of the public lands, and that the same were received by the register and receiver, who issued to him a patent certificate showing that he had paid the purchase price, and that he, his heirs and assigns, were entitled to a patent therefor; and that afterwards, on the 15th day of December, 1855, a patent was issued by the United States upon such certificate and in accordance therewith; but this defendant denies that such statements and affidavits were procured, obtained, or presented by or under the hiring, direction, or control of this defendant, and he denies that he procured in corroboration of such statements affidavits of other persons; and, upon information and belief, he

denies that said statements and affidavits contain false and fraudulent statements.

This defendant, further answering, admits that Aaron Peterson entered the northwest quarter of section five (5), in township forty-eight (48) north, of range thirteen (13) west of the fourth principal meridian, in Douglas County, Wisconsin, on the 1st day of June, 1855, and that on the same day he conveyed by warranty deed to this defendant the said tract of land, for a consideration of two hundred and seventy-five dollars, which deed was recorded in the office of the register of deeds of said Douglas County on the 20th day of August, 1855; but he denies
35 that the said Aaron Peterson entered the said land under the employment, hiring, direction, or control of this defendant.

This defendant admits, upon information and belief, that said Aaron Peterson presented certain statements and affidavits to the register and receiver of the proper land office for the purpose of showing that he was entitled to enter said tract of land under the preemption laws of the United States; that the same were received by the said register and receiver, who issued to him a patent certificate showing that he had paid the purchase price therefor and was entitled to a patent granting the said land unto him, his heirs and assigns; and that afterwards, on the 1st day of May, 1856, upon said patent certificate a patent was issued accordingly. But this defendant denies that the said statements and affidavits were obtained or presented by or under the hiring, direction, or control of this defendant, and he denies that for the purpose of procuring such entry, and in corroboration of the statements and affidavits of the said Aaron Peterson, he procured the affidavits of other witnesses, which were filed with said register and receiver, and, upon information and belief, he denies that said statements and affidavits were false and fraudulent.

This defendant, further answering, admits that Israel Johnson entered the northeast quarter of section five (5) of said township and range on the 22nd day of June, 1855, and that on the same day said Israel Johnson conveyed by warranty deed the said quarter section of land to this defendant for a consideration of two hundred and seventy dollars, which deed was recorded in the office of the register of deeds in said Douglas County on the 20th day of August, 1855; but this defendant denies that the said Israel Johnson made such entry under the employment, hiring, direction, or control of this defendant.

But this defendant, upon information and belief, admits that the said Israel Johnson presented certain written statements and affidavits to the register and receiver of the proper land office for the purpose of establishing his right to enter said tract of land under the preemption laws of the United States, and that the same were received by the register and receiver, who issued to him a patent certificate showing that he had paid the purchase price therefor and was entitled to a patent from the United States granting the said quarter section of land to him, his heirs and assigns, and that afterwards, on the 1st day of May, 1856, a patent was issued to him accordingly. But this defendant denies that the said statements and affidavits were obtained or presented by or under the hiring, direction, or control of this defendant, and he denies that for the purpose of procuring said entry, and in corroboration of said statements and
36 oath of said Israel Jonson, he procured the affidavits of other witnesses, and, upon like information and belief, this defendant denies

that the said statements and affidavits so presented by the said Israel Johnson contained false and fraudulent statements.

This defendant, further answering, admits that Ole Weslerland entered the northeast quarter of section four (4) in said last-named township and range on the 22nd day of June, 1855, and on the same day that he conveyed it to this defendant by warranty deed for a consideration of two hundred and seventy dollars, which deed was recorded in said Douglas County on the 20th day of August, 1855; but this defendant denies that the said Ole Westerland entered said quarter section under the employment, hiring, direction, or control of this defendant.

This defendant admits, upon information and belief, that the said Ole Westerland did present to the register and receiver of the proper land office certain written statements and affidavits showing that he was entitled to enter said quarter section of land according to the preemption laws of the United States, and that the same were received by the said register and receiver, who issued to him a patent certificate showing that the purchase price therefor had been paid, and that he, his heirs and assigns, were entitled to a patent therefor, and that such patent was afterwards, on the 1st day of May, 1856, issued accordingly; but this defendant denies that such statements and affidavits were obtained under the hiring, direction, or control of this defendant.

This defendant denies that he, for the purpose of procuring said entry, and in corroboration of said statements and oath of said Ole Westerland that he had settled, resided upon, and improved said land, and erected a dwelling house thereon, obtained or presented any affidavits whatever, and, upon like information and belief, he denies that the said written statements and affidavits so presented by the said Ole Westerland were false and fraudulent.

This defendant, further answering, admits that Martin Larson entered the northeast quarter of section six (6) of the last-named township and range on the 1st day of June, 1855, and that the said Martin Larson on the same day conveyed said quarter section of land by warranty deed to this defendant for a consideration of two hundred and ninety dollars, which deed was recorded in the office of the register of deeds of said Douglas County on the 20th day of August, 1855; but this defendant denies that such entry was made under his employment, hiring, direction, or control.

This defendant admits, upon information and belief, that the said Martin Larson presented to the register and receiver of the proper land
37 office certain statements in writing and affidavits showing the preemption of said land according to the provisions of the preemption laws of the United States entitling him to make entry of said quarter section of land, which were received by said register and receiver, who issued to him a patent certificate showing that he had paid the purchase price therefor, and that he, his heirs and assigns, were entitled to a patent therefor, and that such patent was afterwards, on the 1st day of May, 1856, issued to him accordingly. But this defendant denies that such statements and affidavits were obtained or presented under the hiring, direction, or control of this defendant, and he denies that for the purpose of procuring such entry, and in corroboration of the statements and oath of the said Martin Larson, he procured and presented any affidavits

whatever; and, upon like information and belief, he denies that such statements and affidavits were false and fraudulent.

This defendant, further answering, admits that Andrew Walmark entered the northwest quarter of section four (4) of said township and range on the 22nd day of June, 1855, and that on the same day he conveyed, by warranty deed, the said quarter section to this defendant for a consideration of two hundred and seventy dollars, which deed was recorded in said Douglas County, in the office of the register of deeds, on the 20th day of August, 1855; but this defendant denies that the said Andrew Walmark made said entry under his employment, hiring, direction, or control.

This defendant admits, on information and belief, that the said Andrew Walmark presented a certain statement in writing, together with affidavits, to the register and receiver of the proper land office for the purpose of establishing a right of entry under the preemption laws of the United States, and that such register and receiver received the same, and issued to him a patent certificate showing the payment of the purchase money therefor, and that he, his heirs and assigns, were entitled to a patent, which was afterwards, on the 1st day of May, 1856, issued accordingly; but this defendant denies that such statements and affidavits were presented under the hiring, direction, or control of this defendant, and he denies that for the purpose of procuring such entry, and in corroboration of the statements and oath of the said Andrew Walmark, he procured or presented any affidavits whatever, and, upon information and belief, he denies that the said statements and affidavits were false and fraudulent.

This defendant, further answering, admits that Otto Walmark entered lots seven (7), eight (8), and nine (9), and the northwest quarter of the northeast quarter of section one (1), in township forty-eight (48) north, of range fourteen (14) west, of the fourth principal meridian,
38 in Douglas County, Wisconsin, on the 22nd day of June, 1855, and that on the same day he conveyed, by warranty deed, the said premises to this defendant for a consideration of two hundred and seventy dollars, which deed was recorded on the 20th day of August, 1855, in the office of the register of deeds of said Douglas County; but this defendant denies that said Otto Walmark made such entry under the employment, hiring, direction, or control of this defendant.

This defendant, upon information and belief, admits that the said Otto Walmark presented certain statements and affidavits, in writing, to the register and receiver of the proper land office for the purpose of establishing his right to make an entry of a quarter section of land under the preemption laws of the United States, and that the same were received by the said register and receiver, and a patent certificate issued showing the payment of the purchase price by the said Otto Walmark, and that he, his heirs and assigns, would be entitled to a patent therefor; and that afterwards, on the 1st day of May, 1856, a patent was issued accordingly. But this defendant denies that the said statements, in writing, and affidavits were presented by the said Otto Walmark by or under the direction, hiring, or control of this defendant, and he denies that for the purpose of procuring such entry, and in corroboration of the statements and oath of the said Otto Walmark, he procured and presented any affi-

davits whatever; and, upon like information and belief, he denies that the statements therein contained were false and fraudulent.

This defendant, further answering, admits that Gustoff John- entered lots one (1), two (2), and three (3), of section one (1), in the last named township and range, on the 22nd day of June, 1855, and that upon the same day he conveyed, by warranty deed, the said premises to this defendant for a consideration of two hundred and seventy dollars, which deed was recorded on the 20th day of August, 1855, in the office of the register of deeds of said Douglas County; but this defendant denies that such entry was made under his employment, hiring, direction, or control.

This defendant admits, upon information and belief, that the said Gustoff Johnson presented a statement in writing, together with affidavits, to the register and receiver of the proper land office, for the purpose of establishing his right to make entry of the said last described land, which were received by the said register and receiver, who issued to him a patent certificate showing the payment by the said Gustoff Johnson of the purchase price therefor, and that he, his heirs and assigns, would be entitled to a patent therefor, and that afterwards, on the 25th day of March, 1865, such patent was issued accordingly; but this defendant denies that such statements and affidavits were procured or pre-
39 sented by or under his hiring, direction, or control, and he denies that for the purpose of procuring such entry, and in corroboration of the statements and oath of the said Gustoff Johnson, he procured or presented any affidavits whatever; and, upon information and belief, he denies that the statements in such writing and affidavits were false.

This defendant, further answering, admits that the person named as the second John Johnson, entered the northwest quarter of section one (1) of the said last named township and range on the said 22nd day of June, 1855, and that on the same day he conveyed by warranty deed the said premises to this defendant, for a consideration of two hundred and ninety dollars, which deed was recorded on the 20th day of August, 1855, in the office of the register of deeds of said Douglas County; and this defendant denies that such entry was made under his employment, hiring, direction, or control.

This defendant admits, upon information and belief, that the said John Johnson presented a statement in writing, together with affidavits, to the register and receiver of the proper land office, for the purpose of establishing his right to make entry thereof under the preemption laws of the United States, which were received by such register and receiver, who issued to him a patent certificate showing the payment of the purchase price therefor, and his right to a patent to himself, his heirs and assigns, and that said patent was afterwards, on the second day of May, 1859, issued accordingly; but this defendant denies that such statements and affidavits were obtained or presented under his hiring, direction, or control, and he denies that he for the purpose of procuring such entry, and in corroboration of the statements and oath of the second said John Johnson, obtained or presented any affidavits whatever; and he denies, upon information and belief, that the statements contained in such writing and affidavits were false and fraudulent.

This defendant, further answering, admits that Sven Magnuson entered the northeast quarter of section two (2), in the last described township and range, on the 1st day of June, 1855, and that he on the same day conveyed said quarter section by warranty deed to this defendant, for a consideration of three hundred dollars, which deed was recorded on the 20th day of August, 1855, in the office of the register of deeds of said Douglas County; but this defendant denies that the said Sven Magnuson made such entry under his employment, hiring, direction, or control.

This defendant admits, upon information and belief, that the said Sven Magnuson, presented to the register and receiver of the proper land office a statement in writing, together with affidavits, for the purpose of establishing his right to make entry of said quarter section of land under the preemption laws of the United States, which were received by the said register and receiver, who issued to him, his heirs and assigns, a patent certificate showing the payment of the purchase money therefor, and that a patent was issued on the 1st day of May, 1856, accordingly; but this defendant denies that the said statement in writing or the said affidavits were obtained by or presented under his hiring, direction, or control, and he denies that he for the purpose of procuring such entry, and in corroboration of the statements or oath of the said Magnuson, obtained and presented any affidavits whatever; but this defendant, upon information and belief, denies that the said statements in writing and affidavits were false and fraudulent.

This defendant, further answering the bill of complaint, upon information and belief, denies that each and every and all of such statements, oaths, affidavits, and proofs, so made in and about such entry and patenting of said lands, and each and every tract and portion thereof, were false and fraudulent, and denies that this defendant procured the same to be made, and each and every of them, knowing them to be so false and fraudulent; but on the contrary, this defendant denies all connection whatever with such statements, oaths, affidavits, and proofs, and avers that he was informed that such entries were made in conformity with the provisions of the acts of Congress permitting such entries to be made.

This defendant, further answering the bill of complaint, upon information and belief, denies that neither of said persons so entering said portions of said land had so settled upon, inhabited, improved, cultivated, and resided upon such portions, so claimed and entered by him, and neither erected a dwelling thereon, and that neither of them so claimed, preempted, and entered upon such portions so claimed, preempted, and entered by them respectively, in good faith, to appropriate the same to his own exclusive use; and denies that he so knew; and denies that each and every of them so claimed, preempted, and entered and procured said patents so claimed, and did every act and thing so done relating thereto, for hire paid by this defendant, and with the intent and under an agreement, contract, and understanding with the defendant that the title which he should so acquire from the United States should be so conveyed to this defendant, and inure to his benefit. On the contrary, he avers that there was no contract, agreement, or arrangement made with the several persons who made such entries, or any or either of them, prior to the entry thereof, by which preemption claims should be asserted, and the said lands, or any or either of them, conveyed to this defendant; and he avers

further that at the time the said several conveyances were made to him he believed that the said several persons who had made entry thereof had in all respects complied with the laws of the United
41 States and the rules of the land office, so as to entitle them to make entry of said tracts of land, and to make the sale of the same.

This defendant, further answering the bill of complaint, as to the allegation that the complainant did not discover said frauds, or either or any of them, until the year 1885, when a special agent of the complainant's General Land Office by direction of that office made an investigation relative thereto, and discovered and reported the same to the said General Land Office, denies the same. On the contrary, he avers that the Commissioner of the General Land Office received complaints that the said tracts of land, or most of them, had been entered by fraudulent representations, and that the persons so entering the same were not entitled under the preemption laws of the United States to purchase the said tracts of land and to receive a certificate or patent therefor, and that the officers of the United States have had such information ever since the year 1856.

This defendant, further answering the bill of complaint, and the averments therein contained in regard to the entry of said tracts of land described in said bill, and the conveyance thereof to this defendant, says that his father, Thomas Stinson, resided at Hamilton, in Canada, during his lifetime, and was possessed of considerable property and means, and between the years 1850 and 1857 he placed in the hands of this defendant moneys to be invested in real estate in Wisconsin and Minnesota; with such moneys this defendant purchased many tracts of land in said States, acting in such purchase as the agent of his father, and taking the title thereto in his own name as a matter of convenience in the transaction of the business, and for the purpose of making sale and conveyance thereof; and this defendant furnished portions of the money of his father to an agent residing at Hudson, Wisconsin, at which place a land office of the United States was located, with directions to purchase lands from persons who might have obtained title thereto from the United States, and who desired to dispose of the same; and this defendant further says that among the land so purchased for his father, Thomas Stinson, and with the money of the said Thomas Stinson, were the fourteen quarter sections of land described in the bill of complaint, and that the purchase price of the said several tracts of land was paid for entirely with the money belonging to the said Thomas Stinson, and the deeds were taken to this defendant as a trustee for his said father, and that he had no personal or pecuniary interest whatever in said quarter sections of land, or any of them, at the time of such purchase, and the making of the deeds by the several persons making entry thereof; and he further says that in the year 1855 this defendant purchased from his father, Thomas Stinson, two of said quarter sections of land, namely, the northwest quarter of section twenty-six (26), in township forty-nine
42 (49) north, of range fourteen (14) west of the fourth principal meridian, which was entered by the first said John Johnson, and the northwest quarter of section thirty-five (35) in township forty-nine (49) north, of range fourteen (14) west of the fourth principal meridian, entered by the said Sven Larson, for a valuable consideration, which was

then and there paid to him, and, as the title stood in this defendant, no conveyance of said quarter sections was made to him by the said Thomas Stinson.

This defendant further says that on the 14th day of April, 1856, he, as evidence of the trust aforesaid, signed an instrument in writing, in which he stated that all of the property held by him in Minnesota Territory and the State of Wisconsin, except that in Traverse des Sioux, Minnesota Territory, and one share—that is, one twenty-seventh—of Superior (that being now Superior City) in the State of Wisconsin, and three hundred and twenty acres adjoining said Superior, in Douglas County, Wisconsin (being the two quarter sections hereinbefore mentioned as entered by the said John Johnson and Sven Larson) belonged to his father, the said Thomas Stinson, and was held by this defendant simply to facilitate the conveyance and sale of said property, if said conveyance and sale should be advisable; that he then delivered the said instrument in writing to the said Thomas Stinson, who added thereto the words, "I admit the above statement to be correct," and signed his name under date of May 3, 1856.

This defendant further says that the said Thomas Stinson died in Hamilton, Province of Ontario, testate, March 13, 1864, leaving three sons, James, this defendant, John, and Henry A., and two daughters, Mary and Jane Ann; that his will was dated June 13, 1863, with a codicil subsequently executed, which was duly admitted to probate at that place, a certified copy of which is ready to be produced on the hearing of this cause.

This defendant further says that a suit was commenced in the court of chancery in the city of Hamilton, in the Province of Ontario, by Thomas Stinson and Marian Stinson, infant children of John Stinson, who, as aforesaid, was one of the sons of Thomas Stinson, on the 24th day of October, 1870, against this defendant and other persons interested in said estate, for the purpose of obtaining a construction of the will of the said John Stinson, and also of Thomas Stinson, and also for an accounting and distribution of the personal estate and the partition of the real estate; and in such suit proceedings were had so that a decree was entered by said court, and a partition was made of the real estate owned by said Thomas Stinson in his lifetime, situated in Illinois, Minnesota, and Wisconsin, as well as real estate owned elsewhere; and that the remaining twelve quarter sections described in the bill of complaint were held to be a
43 part of the estate of the said Thomas Stinson, deceased, during his lifetime and at his death, and that the same passed by the provisions of his will to the devisees thereof; and in the proceedings for such partition in said cause the northeast quarter of section six (6) and the northeast quarter of section four (4), in township forty-eight (48) north, of range thirteen (13) west, the northwest quarter of section one (1) and the northwest quarter of the northeast quarter of section one (1), in township forty-eight (48) north, of range fourteen (14) west, and the southwest quarter of section thirty-five (35), in township forty-nine (49) north, of range fourteen (14) west, were allotted to the said Thomas Stinson and Marian Stinson, infant children of the said John Stinson, deceased; and the northwest quarter of section five (5), in township forty-eight (48) north, of range thirteen (13) west, the northeast quarter

of section two (2), in township forty-eight (48) north, of range fourteen (14) west, and the northwest quarter of section thirty-three (33), in township forty-nine (49) north, of range fourteen (14) west, were allotted to the said Henry A. Stinson; and the northeast quarter of section five (5) and the northwest quarter of section four (4) in township forty-eight (48) north, of range thirteen (13) west, the southwest quarter of section twenty-eight (28), in township forty-nine (49) north, of range fourteen (14) west, lots seven (7), eight (8), and nine (9) of section one (1), in township forty-eight (48) north, of range fourteen (14) west, and lots one (1), two (2), and three (3) of the southeast quarter of section one (1), in township forty-eight (48) north, of range fourteen (14) west, were allotted to this defendant; and the title thereto was confirmed in the several persons to whom such allottments were made, as aforesaid.

This defendant further says that his said brother, Henry A. Stinson, died testate October 28, 1877, and by his will, which was duly probated, he devised to this defendant the three quarter sections of land so allotted to him, as aforesaid; and that on the 31st day of August, 1882, he purchased from the heirs of the said John Stinson, deceased, said tracts of land so allotted to them, and other lands, for the sum of twelve thousand dollars, which has been paid; which deed was recorded in the office of the register of deeds of said Douglas County on the 16th day of November, 1882; and this defendant derived his title to the said twelve quarter sections through the said Thomas Stinson, the said Henry A. Stinson, and the heirs of the said John Stinson, deceased, and not otherwise; and that he derived his title to the said two quarter sections of land so entered by the said John Johnson and Sven Larsen by purchase from his said father, Thomas Stinson, during his lifetime, and not otherwise, except as hereinafter stated.

44 This defendant, further answering, says that each one of the said fourteen quarter sections of land described in the bill of complaint were sold in 1877 for the taxes assessed thereon, in pursuance of the laws of the State of Wisconsin, to the county of Douglas in that State, in which they were situated, and tax deeds executed therefor to said Douglas County, dated September 2, 1880, and recorded on the same day, and this defendant purchased for a valuable consideration said titles from Douglas County, and received deeds therefor, dated June 20, 1881, which were recorded in the proper office on the 29th day of June, 1881, and this defendant sets up the said titles based upon said tax sale as a paramount title to the said several tracts of land described in said bill.

This defendant, further answering, says that he has already paid taxes on said lands to the amount of seventy-five thousand dollars, and that there are now due upon said lands the taxes of 1892, 1893, and 1894, which must soon be paid, amounting to about eighty thousand dollars, all of which taxes this defendant intends to pay, except those levied since the sale of said lands to said Henry J. Stinson, and which will all be paid as soon as defendants shall be able to do so.

And this defendant, further answering the bill of complaint, and particularly as to the allegations respecting the alleged agreement or agreements with the said persons who made entry of the said several tracts of land, and the fraud charged therein, says that he was very much interested as one of the original propietors of Superior, now known as the

city of Superior, at the western end of Lake Superior, and had charge to a certain extent of the improvements made in opening and grading streets, constructing bridges, &c., at said place, and for that purpose he employed the said first John Johnson to hire laborers to work on the opening of said streets and making of such improvements for the proprietors of said Superior, and that said John Johnson did hire persons to work as laborers at said place, and among them were, as he is informed and believes, some of them named in the bill as having entered some of said fourteen quarter sections of land; and who he says, upon information and belief, went to Superior and *there labored for* a considerable time under such employment; but this defendant denies that he in any way employed the said persons, or the fourteen persons named in the bill, or any of them, to enter upon any public land, or to assert any preemption claim thereto; and he says, upon information and belief, that each one of the said fourteen persons named in the bill as having entered said fourteen quarter sections of land did enter upon said quarter section of land subsequently entered by him and erected residences thereon and resided therein, and subsequently made claim to such lands under
45 the preemption laws of the United States, at the land office in Hudson, Wisconsin; and when such fourteen entries were made, and not before, that the said lands were purchased by and conveyances made to this defendant, as aforesaid. He further says that such purchases were only a portion of lands that were obtained by him, and titles taken in his name as aforesaid, with the money of his father, and conveyances made to this defendant as a trustee for him.

This defendant, further answering the bill of complaint, says, upon information and belief, that this suit is not prosecuted for the benefit of the complainant, but for the benefit of certain private individuals who prompted the commencement of the suit, and are now prosecuting the same in the name of the United States, and with the aid of its officers, in order that they may be enabled to make entry of the said several tracts of land by the location of land script thereon, or the payment of the price fixed by the laws of Congress; and he further says upon information and belief and avers, that prior to the commencement of any suit in the name of the United States against this defendant a combination and conspiracy was formed by certain persons residing at Superior, in Douglas County, Wisconsin, in connection with others residing at Saint Paul, Minnesota, and for the purpose of carrying out the said conspiracy the persons so residing in Saint Paul furnished to those living at Superior city, or in its vicinity, the sum of twenty-five thousand dollars, to be used for erecting houses upon each of said fourteen tracts of land, for the payment of lawyers' fees and other expenses necessary to set aside the title of this defendant and secure said lands to themselves; and this defendant avers upon like information and belief, that William H. Newton, Edmund R. Otis, Robert Howenstine and others residing at said Superior city were parties to such combination and conspiracy, and that one O. W. Streeter was employed as attorney by them to prosecute suits for the recovery of said lands, and that this proceeding is the result of such arrangement; and he further says that small houses, or shanties, were erected on each of said tracts of land, and during the year 1888 Paul Wood, Harry Newton, Charles Newton, J. A. Clark, John

F. Cargill, Daniel Johnson, Edmund R. Otis, John A. Harrison, James Newton, James Robbins, Gilbert Falconer, William H. Newton, I. W. Cornell, and Eugene N. Cornell entered into the actual occupation of said several fourteen quarter sections of land, claiming to reside thereon, and to have acquired a prior right of purchase under the laws of the United States when the title of this defendant should be set aside at the suit of the United States. He further says that the persons so occupying
46 said premises have since changed to some extent, and others have taken their places, and among them Benjamin Johnson, Charles Roberts, and S. W. Howenstine, all of whom have, or are asserting, claim to said lands; and this defendant, upon like information and belief, avers that this suit is prosecuted for their benefit and not for the benefit of the United States.

This defendant, further answering, says that on the 19th day of May, 1882, he conveyed by warranty deed to George L. Brooks twenty acres, being part of lot seven and of the northwest quarter of section one, in township forty-eight north, of range fourteen west, and the said Brooks took the actual possession thereof, and is now claiming the same under such conveyance. He further says that he conveyed on the 10th day of August, 1881, to the Northern Pacific Railroad Company, a portion of the northeast quarter of section two, in township forty-eight north, of range fourteen west, and said company is now claiming the same under such conveyance; and also that on the 3rd day of October, 1881, he conveyed to the Chicago, St. Paul, Minneapolis and Omaha Railway Company a portion of the northwest quarter of section four, in township forty-eight north, of range thirteen west, and said company is now claiming the same under such conveyance; all of which deeds were recorded in the proper office immediately after the execution thereof; and he further says that prior to the commencement of this suit, and in 1889, the Duluth, South Shore and Atlantic Railway Company condemned a strip of land forty feet in width across the northwest quarter of section twenty-six, in township forty-nine north, of range fourteen west, for a right of way, and are now occupying the same under the judgment of the circuit court of said Douglas County.

This defendant, further answering, says that prior to the commencement of this suit, and in February, 1894, the Northwestern Coal Railway Company condemned a strip of land 100 feet in width across the north half of said sections five and six for a right of way, and said company are now occupying the same under the judgment of the circuit court of said Douglas County.

Defendant further shows that his codefendant, Henry J. Stinson, has sold and conveyed to the Superior Short Line Railway Company twenty-two 73/100 (22 73/100) acres in the northwest quarter of section four, in township forty-eight north, of range thirteen west, and to Edwin W. Winter the northeast quarter of the northwest quarter of said section four, and said grantees are now in the possession thereof.

This defendant, further answering, denies that there was any joint scheme, combination, conspiracy or device conceived by this defendant in connection with the said fourteen persons named in the bill as
47 having entered the said fourteen quarter sections of land, or either or any of them, to acquire the said tracts of land by false representations or fraudulent means, and he says that there was no common

arrangement for the purchase or procurement of said tracts of land, but that each tract of land was purchased, as hereinbefore stated, with the money of the said Thomas Stinson by this defendant, or by an agent appointed by him for that purpose, from each of the persons making the entries of said tracts of land separately, and therefore he claims that the said bill is multifarious and cannot be maintained in a court of equity.

This defendant, further answering the bill of complaint, sets up as a defense and a bar to relief by the complainant the expiration of time since the sale of said several tracts of land by the United States to the several persons who made entry thereof before the commencement of this suit, and avers that the Commissioner of the General Land Office was informed of the allegations of fraud now contained in this bill in the year 1856, and that the evidence of such information has been at all times accessible to his successors in office; and this defendant insists that because of these facts a court of equity ought to remain passive, and not give any relief to the complainant in the premises.

Further answering, this defendant states that it is true that on or about the 19th day of March, 1894, this defendant and his wife conveyed to the defendant, Henry J. Stinson, all the lands described in the bill, except the northwest quarter of the northwest quarter of section twenty-six, in township forty-nine north, of range fourteen west, for the consideration expressed in the conveyance of fifteen hundred thousand dollars, and that said conveyance was recorded as alleged in the bill. Defendant further says that it is true that said Henry J. Stinson did not pay any money for the lands, but he says that forty thousand dollars of such consideration price was at the time of such conveyance agreed upon and liquidated by defendants as and for the value of the services which said Henry J. Stinson had rendered for this defendant in his business, and at his request; and said Henry J. Stinson gave notes, secured by mortgages upon said lands, for the sum of fourteen hundred and sixty thousand dollars, being the amount of the purchase price, less said sum liquidated for such services. This defendant denies that his codefendant, Henry J. Stinson, at the time of said conveyance had knowledge of all or any of the statements contained in said bill, or knew or had any notice that this defendant had acquired or held the legal title to said lands in fraud of the United States; but, on the contrary, he alleges that all of the statements of the bill in that behalf are unfounded and untrue in all respects.

This defendant, further answering, says that it is not true, as alleged in said bill, that said conveyance by this defendant to said
48 Henry J. Stinson was made for the purpose of hindering, delaying, or defrauding the complainants out of their alleged rights in or to said lands, or any thereof, or of impeding the prosecution of this or any other action for the recovery thereof, and that the said mortgages or the notes accompanying the same were executed with any such purpose or for any such end, or for any purpose other than as hereinafter stated.

This defendant, further answering, states that the purpose and object of said conveyance by him made to said Henry J. Stinson, and of the execution and delivery to this defendant of said notes and mortgages, was, that on the 11th day of August, 1887, the complainant filed a bill in this court against this defendant, substantially the same as the bill of

complaint in this cause, except the allegations as to the conveyance of said lands to the said Henry J. Stinson, and upon the same day, by an injunction issued out of this court, this defendant was restrained from selling, conveying, or mortgaging said lands, or any part thereof, and the said injunction remained in force until the 24th day of February, 1894, when, upon motion, argument, and hearing, the said suit was dismissed by said court for want of prosecution on the part of the United States, and the said injunction was vacated and dissolved. This defendant has been unable, by reason of said injunction, to convey or in any way dispose of said lands for nearly seven years, during which period the said lands rose in value to a very great extent, and might have been sold at high prices, but this defendant was unable to dispose of any thereof, but was at the same time compelled to pay very large sums of money for taxes thereon. At the time of the dismissal of said former suit a great financal depression existed throughout the whole country, and still continues to a great extent, and this defendant was very much pressed for want of money with which to pay taxes on the said lands and to pay the necessary and usual expenses of his business, and it was necessary that the lands in question should in some manner be made to afford him financial assistance; and it was for these reasons, and not for the purpose alleged in the bill, that such conveyance, mortgages, and notes were made, so that he might by the negotiation of said notes procure moneys absolutely necessary for his use; and this defendant then supposed and believed that the United States would, after leaving the said former suit to rest without any prosecution whatever for nearly four years, allow his title to rest, and not begin any other suit; and relying upon such belief and for the sole purpose of obtaining some use and advantage of said lands in a most depressed financial situation, and being enabled to pay the taxes thereon, the said transaction was had between this defendant and the said Henry J. Stinson.

49 And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill contained, material, or necessary for this defendant to answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed.

SPOONER, SANBORN, KERR & SPOONER,
Solicitors for Defendant.

R. M. BASHFORD,
Of Counsel.

STATE OF ILLINOIS, *County of Cook, ss:*

James Stinson, being first duly sworn, on oath says that he is one of the defendants above named; that he has read the foregoing answer, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes the same to be true.

JAMES STINSON.

Subscribed and sworn to before me this 7th day of March, A. D. 1895.
[SEAL.]
LEIGH H. JACKSON,
Notary Public, Cook County, Illinois.

(Endorsed:) 279. Circuit court of the United States, western district of Wisconsin. United States of America, complt., vs. James Stinson and Henry J. Stinson, defts. Answer of James Stinson. Filed March 9, 1895. F. M. Stewart, clk.

On same day came the solicitors for the defendant Henry J. Stinson and filed his answer, as follows, to wit:

50 *Answer of Henry J. Stinson, filed March 9, 1895.*

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The separate answer of Henry J. Stinson, one of the defendants, to the bill of complaint of the United States of America, complainants.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained for answer thereunto or unto so much and such part thereof as this defendant is advised is material or necessary for him to make answer unto this defendant answering says that he knows not, and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief or otherwise, whether the allegations of said bill, down to the concluding paragraphs thereof, on pages 35 and 36, relating to the conveyance of the lands described in the said bill to this defendant, and the execution of notes and mortgages by him are true; and this defendant is an utter stranger to all and every such matters and things (except as to the said conveyance, notes, and mortgages, which matters are herein fully answered), and cannot give any answer or discovery in relation thereto, except that he says that the said James Stinson denies all charges in said bill contained of fraud and conspiracy on his part in the entry of said lands, and this defendant believes such denial to be true.

Further answering this defendant says that it is true that on or about the 19th day of March, 1894, the defendant James Stinson and wife conveyed to this defendant all the tracts of land described in the bill, except the northwest quarter of the northwest quarter of section twenty-six, in township forty-nine north, of range fourteen west, for the expressed consideration of fifteen hundred thousand dollars, and that the conveyance therefor was recorded as stated in the bill. Further defendant says that it is true that this defendant did not pay any money for the said lands, but that forty thousand dollars of such consideration price was at the time of such conveyance agreed upon and liquidated by said defendants as and for the value of the services which this defendant had ren-

dered to said James Stinson in his business, and at his request,
51 and this defendant gave notes, secured by mortgages on said lands for the sum of fourteen hundred and sixty thousand dollars, being the amount of the purchase price thereof, less the said liquidated sum for services. This defendant denies that at the time of the making of such conveyance, or at any other time, he had any notice or knowledge of the matters and things stated in said bill of complaint, or knew or had any notice whatever that the said James Stinson held title to said lands in fraud of the complainant; and he alleges that the said James Stinson denies all the charges in said bill contained of fraud or conspiracy in the entry of said lands, and defendant believes such denial to be true.

And this defendant, further answering, says that it is not true, as alleged in said bill, that such conveyance to this defendant was made for the purpose of hindering, delaying, or defrauding the complainants out of their alleged rights in or to said lands, or of impeding the prosecution of this or any action for the recovery thereof, and that the said mortgages, or the notes accompanying the same, were executed with any such purpose or for any such end, or for any purpose other than as hereinafter stated.

This defendant, further answering, states that the purpose and object of said conveyance to him by said James Stinson, and of the execution and delivery by him of said notes and mortgages, was as follows: On the 11th day of August, 1887, the complainants filed a bill in this court against the said James Stinson substantially the same as the bill of complaint in this cause, except the allegations as to the conveyance of said lands to this defendant, and upon the same day, by an injunction issued out of this court, the said James Stinson was restrained from selling, conveying, or mortgaging said lands, or any part thereof, and the said injunction remained in force until the 24th day of February, 1894, when the said suit was on motion and hearing dismissed by said court for want of prosecution on the part of the United States, and by order and decree the said injunction was dissolved. The said James Stinson had been unable to convey or in any way dispose of said lands for nearly seven years, during which period the said lands rose in value to a very great extent, and might have been sold at high prices, but said James Stinson was unable to dispose of any thereof, by reason of the injunction, but was at the same time compelled to pay very large sums of money for taxes thereon. At the time of the dismissal of said former suit a great financial depression existed throughout the whole country, and which still continues to a great extent, and the said James Stinson was very much pressed for want of money with which to pay taxes on the said lands, and to pay the necessary and usual expenses of his business, and
52 it was necessary that the lands in question should be in some manner be made to afford him financial assistance; and it was for these reasons, and not for the purpose alleged in the bill, that such conveyance, mortgages, and notes were made, so that he might, by the negotiation of said notes, procure moneys absolutely necessary for his use; and both this defendant and the said James Stinson then supposed and believed that after leaving the said former suit to rest without any prosecution whatever for nearly four years, the United States would not

begin any other suit; and relying upon such belief, and for the sole purpose of obtaining some use and advantage of said lands in a most depressed financial situation and being enabled to pay the taxes thereon, said transaction was had between this defendant and the said James Stinson. This defendant further states that since the making of such conveyance he has sold and conveyed to the Superior Short Line Railway Company twenty-two $\frac{73}{100}$ ($22\frac{73}{100}$) acres in the northwest quarter of section four, in township forty-eight north, of range thirteen west, and to Edwin W. Winter the northeast quarter of said northwest quarter of said section four, and said grantees are now in the possession thereof. This defendant further shows that the taxes on said lands for the years 1892, 1893, and 1894 have not been paid, but will be paid by him as soon as the money can be raised for the purpose.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill contained, material or necessary for this defendant to answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed.

SPOONER, SANBORN, KERR & SPOONER,
Solicitors for Defendant.

R. M. BASHFORD,
of Counsel.

STATE OF ILLINOIS, *County of Cook, ss:*

Henry J. Stinson, being first duly sworn, on oath says that he is one of the defendants above named; that he has read the foregoing answer, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes the same to be true.

53

HENRY J. STINSON.

Subscribed and sworn to before me this 7th day of March, A. D. 1895.

[SEAL.]

LEIGH H. JACKSON.
Notary Public, Cook County, Illinois.

(Endorsed:) 279. Circuit court of the United States, western district of Wisconsin. United States of America, complts., vs. James Stinson and Henry J. Stinson, defts. Answer of Henry J. Stinson. Filed March 9, 1895. F. M. Stewart, clk.

Replication to answer of James Stinson. Filed April 1, 1895.

Afterwards, to wit, April 1, 1895, came the complainants, by their solicitors, and filed their replication to the answer of James Stinson, as follows:

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
against
JAMES STINSON AND HENRY STINSON, DEFENDANTS. } In equity.

These complainants and repliants, severally reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, James Stinson, for replication thereunto, say that they, said complainants and repliants, do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendant, James Stinson, and that the answer of the said defendant, James Stinson, is very uncertain, evasive, and insufficient in law to be replied unto by these complainants and repliants; without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these complainants and repliants are ready to aver, maintain, and prove, as this honorable court shall direct.

54 And humbly pray as in and by their said bill they have already prayed.

HARRY E. BRIGGS,
U. S. Atty. West. Dist. of Wis., and
JAMES G. FLANDERS,
Special Asst. U. S. Atty., Complainants' Solicitors.

(Endorsed:) U. S. circuit ct., west. dist. of Wis. United States v. James Stinson and Henry Stinson. Replication to answer of James Stinson. Filed April 1st, 1895. F. M. Stewart, clk.

Replication to answer of Henry J. Stinson, Filed April 1, 1895.

And on same day, to wit, April 1, 1895, came the complainants, by their solicitors, and filed their replication to the answer of Henry Stinson, as follows:

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
against
JAMES STINSON AND HENRY STINSON, DEFENDANTS. } In equity.

These complainants and repliants, severally reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the separate answer of the said defendant, Henry Stinson, for replication thereunto, say that they, said complainants and repliants, do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendant, Henry Stinson, and that the answer of the said defendant, Henry Stinson, is very uncertain, evasive, and insufficient in law, to be replied unto by these complainants and repliants; without that, that any other matter or thing in the said answer contained,

material, or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these complainants and repliants are ready to aver, maintain, and prove, as this honorable court shall direct.

55 And humbly pray, as in and by their said bill they have already prayed.

H. E. BRIGGS,
U. S. Atty. West. Dist. of Wis., and
JAMES G. FLANDERS,
Special Asst. U. S. Atty., Complainants' Solicitors.

(Endorsed:) Circuit court of the U. S., west. dist. of Wis. United States v. James Stinson and Henry Stinson. Replication to answer of Henry Stinson. Filed Apr. 1st, 1895. F. M. Stewart, clk.

Order of Feb. 4, 1896, as to time for taking testimony.

Afterwards, to wit, February 4, 1896, filed order for term probatory, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON AND HENRY J. STINSON.

The application of the complainants for fixing a term probatory in this cause came on this day to be heard, James G. Flanders and H. E. Briggs appearing for the complainants and Spooner, Sanborn, Kerr & Spooner appearing for the defendants, and it appearing to the court that this application has not been sooner made on account of delay resulting from the mutual convenience of counsel for both parties:

Now, on motion of counsel for the complainants, it is ordered that the complainants have forty days from this date in which to take their testimony in support of the bill of complaint; that the defendants have forty days thereafter in which to take their testimony in defense, and that the complainants have ten days thereafter in which to take their testimony in reply.

Further ordered, that either party may take testimony during the time limited for the taking of testimony under this order by the other party; also that testimony in the cause may be taken by deposition by either party under the acts of Congress in such case made and provided.

Further ordered, that the testimony under this order may be taken before any of the examiners of this court or any United States
56 court commissioner in any other district of the United States without further order in that behalf.

By the court.

R. BUNN, *Judge.*

Dated February 4, 1896.

(Endorsed:) United States v. James Stinson. Order for parties to take testimony. Filed Feby. 4, 1896. F. M. Stewart, clk.

Stipulation as to testimony of M. S. Gibson.

Afterwards filed stipulation to take testimony of M. S. Gibson, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON AND HENRY J. STINSON.

It is stipulated that the testimony of Moses S. Gibson, a witness on the part of the complainant, may be taken by deposition de bene esse by and before Charles S. Bundy, a United States circuit court commissioner in and for the District of Columbia, at his office in the city of Washington, on the 1st day of April, 1896, at the hour of two o'clock in the afternoon.

JAMES G. FLANDERS &
H. E. BRIGGS, *Solicitors for Complainant.*
SPOONER, SANBORN, KERR & SPOONER,
Solicitors for Defendants.

Also deposition of said Moses S. Gibson, taken at Washington, D. C., April 1, 1896, before Charles S. Bundy, United States court commissioner for the District of Columbia, as follows:

57 *Deposition of Moses S. Gibson.*

In the circuit court of the United States, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

WASHINGTON, D. C., *April 1, 1896—2 o'clock p. m.*

Deposition of Moses S. Gibson, taken by and before Charles S. Bundy, United States court commissioner in and for the District of Columbia, at his office in the city of Washington, in said District, on the first day of April, 1896, at 2 o'clock in the afternoon.

There appeared for the complainants H. E. Briggs, United States district attorney, western district of Wisconsin. For the defendant, A. L. Sanborn.

It is stipulated and agreed that the testimony of the witness may be taken in shorthand by John W. Hulse and afterwards extended on the typewriter, with the same effect as if taken down by the commissioner in person, and may be afterwards read over to the witness and signed by him, and the said Moses S. Gibson, being duly cautioned and sworn to testify the truth, and being carefully examined, testified as follows:

Examination by Mr. BRIGGS:

Q. What is your full name?
A. Moses S. Gibson.
Q. Where do you live?

A. I am living now at Forest Glenn.
Q. Near the city of Washington?
A. About nine miles and a half out.
Q. What is your present occupation?
A. Clerk.
Q. Where?
A. In the Sixth Auditor's office.
Q. Post-Office Department?
A. Treasury Department.
Q. What is your age?
A. 75 years.
Q. What are your duties in your present employment?
A. Sorting and preparing money orders for the archives.
Q. Where did you live in the years 1854 and 1855?
A. In Hudson, Wisconsin.
Q. What was your occupation there? Were you a notary public?
A. I was a notary public.
58 Q. Do you know James Stinson?
A. I am not intimately acquainted with him. I have met him once or twice on business; that is all.
Q. Did you know him at that time?
A. I knew him by sight simply.
Q. Did you have any business relations with the said James Stinson in either of those years? Did you do any work for him of any kind?
A. Yes, sir.
Q. What?
A. I took some acknowledgments, and, I think, drew up some proofs for some parties that were making entries by preemption in the land office.
Q. Of what nationality were these parties?
A. These parties were Swedes, I think; according to the best of my recollection.
Q. What land office was it?
A. Hudson, Wisconsin.
Q. The year was what?
A. According to these papers here, I think it was in 1855. I can look again, though. I can tell by those better than I can by my own memory 40 years ago.
Q. How came you to do this work for Stinson? How did it come about?
A. He requested me to do so.
Q. Where?
A. At one time—that is the most I can recollect now—I met him when I was across the lake, at St. Croix, going up the river. He said he had some business for me with the land office and that I must go back.
Q. What were you doing?
A. Then?
Q. Yes.
A. I was going up the river at that time.
Q. On what business?
A. I was going on political business.
Q. Electioneering?

A. Electioneering for myself
Q. You were a candidate for public office, were you?
A. I was candidate for State senator at that time.
Q. Against whom?
A. William J. Gibson.
Q. You were a candidate for senator in the fall of 1854, were you?
A. I don't know what year it was.
Mr. BRIGGS. William J. Gibson was a State senator serving in 1855–56. That is from the blue book.
Q. (By Mr. BRIGGS.) Was there any talk between you and Stinson as to what your compensation should be at this time?
A. He said, Go back to Hudson, and he would give me $20 to do some business for him. I had crossed the lake then, on the Minnesota side.
Q. Did he pay you this money before you went?
A. Yes; he paid it to me over on the Minnesota side.
Q. And then you went back to Hudson?
A. Then I went back to Hudson.
59 Q. Did you find there this party of Swedes, of whom you have spoken? Or was there a party of Swedes there?
A. There were a few there.
Q. Did they seem to be under the control or management of anybody?
Mr. SANBORN. That I object to as leading, incompetent, irrelevant, and immaterial.
Q. (By Mr. BRIGGS.) Did these Swedes seem to be under the direction or guidance of anybody?
A. They seemed to be directed, to some extent, by Mr. Stinson.
Q. Of what did the work that you did consist, as you recollect? Did you draw any deeds at that time?
A. I think I did draw some deeds.
Q. I hand you preemption declaratory statement of Otto Wallmark, bearing date June 22, 1855, and ask you if the body of that statement is in your handwriting?
Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.
A. That is my writing.
(It is admitted that this paper is the original declaratory statement of said Otto Wallmark.
Counsel for the United States thereupon offered said paper in evidence, and the same is marked "Exhibit 1," and hereunto annexed.)
Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant, the admission being made for the purpose of saving time and obviating the necessity of attaching the original to the deposition, but not waiving any objections which may be made to the competency or relevancy of the statement.
Q. (By Mr. BRIGGS.) I hand you the admitted original preemption declaratory statement of Andrea Wallmark, dated June 22, 1855, and ask you if the body of that statement is in your handwriting?
Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.
A. Yes, sir.
(Counsel for complainants thereupon offered said paper in evidence, the same being marked "Exhibit 2," and filed herewith.)

Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant.

Q. (By Mr. BRIGGS.) I hand you the admitted original preemption declaratory statement of Gustav Johansen, bearing date June 22, the year being a blank, and ask you whether the body of that statement is in your handwriting?

60 Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

(Counsel for complainants thereupon offered said paper in evidence, the same being marked "Exhibit 3," and filed herewith.)

Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant.

By Mr. BRIGGS. I hand you admitted original preemption declaratory statement of Israel Jansen, bearing date June 22, 1855, and ask you whether the body of that statement is in your handwriting?

Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant.

A. That is my writing.

(Counsel for complainants thereupon offered in evidence the said paper, the same being marked "Exhibit 4," and hereunto annexed.)

Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant.

Q. (By Mr. BRIGGS.) I hand you admitted original affidavit of Sven Larson, dated October 24, 1854, and ask you whether the body of that is in your handwriting?

Mr. SANBORN. Objected to as incompotent, irrelevant, and immaterial.

A. Yes, sir.

(Counsel for complainants thereupon offered said paper in evidence, and the same is filed herewith, marked "Exhibit 5.")

Mr. SANBORN. Objected to as immaterial, irrelevant, and incompetent.

Q. (By Mr. BRIGGS.) I hand you admitted original affidavit of Laurens Johnson, dated October 24, 1854, and ask you whether that is in you' handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

(Counsel for complainants thereupon offered in evidence said paper, and the same is hereunto annexed, marked "Exhibit 6.")

Q. (By Mr. BRIGGS.) I hand you admitted original preemption affidavit of Sven Larson, dated October 24, 1854, and ask you whether the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant.

A. Yes, sir.

61 (Counsel for complainants thereupon offered in evidence said paper, and the same is hereunto annexed, marked "Exhibit 7.")

Mr. SANBORN. Objected to as incompetent, immaterial, and irrelevant.

Q. (By Mr. BRIGGS.) I hand you admitted original affidavit of Otto Wallmark, dated June 22, 1855, being an affidavit relative to the claim of Gustav Johansen, and ask you whether the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

(Counsel for complainants thereupon offered said paper in evidence, and the same is hereunto annexed, marked "Exhibit 8.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original affidavit of Peter Norell, dated October 24, 1854, being an affidavit in regard to the claim of Sven Larson, and ask you whether the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

(Counsel for complainants thereupon offered said paper in evidence, the same being hereunto annexed, marked "Exhibit 9.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original affidavits of Aron Petterson and John Johnson, bearing date June 1, 1855, in regard to the citizenship of Andrea Svenson, and ask you whether the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. It is.

(Counsel for complainants thereupon offered in evidence said paper, the same being hereunto annexed, marked "Exhibit 10.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you original affidavit of John Johnson, dated June 22, 1855, in regard to the preemption claim of John Johnson, and ask you if the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as irrelevant, immaterial, and incompetent.

A. Yes, sir.

62 (Counsel for complainants thereupon offered said paper in evidence, the same being hereunto annexed, marked "Exhibit 11.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original joint affidavit of Martin Larson and John Johnson, dated June 1st, 1855, in regard to the citizenship of Sven Larson, and ask you whether the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. It is.

(Counsel for complainants thereupon offered said paper in evidence, the same being hereunto annexed, marked "Exhibit 12.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original preemption affidavit of Andreas Svenson, dated October 24, 1854, and ask you if the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. It is.

(Counsel for complainants thereupon offered in evidence said paper, the same being hereunto annexed and marked "Exhibit 13.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original affidavit of Andrea Svenson, dated October 24, 1854, in relation to the preemption claim of Laurens Johnson, and ask you if the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. It is.

(Counsel for complainants thereupon offered said paper in evidence, the same being hereunto annexed, marked "Exhibit 14.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original joint affidavit of Martin Larson and John Johnson, bearing date June 1st, 1885, in relation to the citizenship of Laurens Johnson, and ask you whether that is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

63 A. It is.

(Counsel for complainants thereupon offered said paper in evidence, the same being hereunto annexed, marked "Exhibit 15.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you original preemption affidavit of Laurens Johnson, bearing date October 24, 1854, and ask you whether the body of that affidavit is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. It is.

(Counsel for complainants thereupon offered said paper in evidence, the same being hereunto annexed, marked "Exhibit 16.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) I hand you admitted original preemption affidavit of John Johnson, dated October 24, 1854, and ask you whether the same is in your handwriting?

Mr. SANBORN. Objected to as irrelevant, immaterial, and incompetent.

A. Yes, sir.

(Counsel for complainants thereupon offered said paper in evidence, and the same is hereunto annexed, marked "Exhibit 17.")

Mr. SANBORN. Objected to as immaterial, irrelevant, and incompetent.

Q. (By Mr. BRIGGS.) I hand you admitted original preemption affidavit of Peter Norell, dated October 24, 1854, and ask you whether the same is in your handwriting?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

A. It is.

(Counsel for complain'ts thereupon offered in evidence said paper, and the same is hereunto annexed, marked "Exhibit 18.")

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

Q. (By Mr. BRIGGS.) Do you remember whether you drew any other declaratory statements, affidavits, or final proofs there at the Hudson land office than those which I have handed you?

A. I have no recollection. I don't remember any. I could not recollect these if I had not seen them.

64 Q. Might you have drawn others?

A. I don't know about that. I have no recollection of any others.

Q. And you have no recollection of these except as I have handed them to you?

A. No. I know I did some business for him, but I could not tell exactly who the parties were, or anything of the kind.

Q. You know you did some business for Mr. Stinson, you mean?

A. Yes, sir.

Q. You said you drew some deeds for Mr. Stinson, or took some acknowledgments. Which was it, or was it both?

Q. (By Mr. SANBORN.) Can you tell whether you did draw any deeds?

A. I think I did.

Q. (By Mr. BRIGGS.) Have you any recollection of having done any work at the land office in either of these years for anyone else than Mr. Stinson?

A. No; I can't give you any names, but I did a good deal of business there. I can't give you the names of anybody now.

Q. Do you recall anything about how you came to draw these affidavits and statements?

A. I drew them at the request of Mr. Stinson.

Q. Who paid you for it?

A. Stinson.

Q. Have you any recollection of any of these parties, whose names you have heard who were applicants for the lands, hiring or paying you for doing any work for them?

A. No; they did not pay me anything.

Q. Have you any recollection of receiving any other money from Mr. Stinson than this one payment of $20, of which you spoke?

A. I can only give you an impression. Perhaps that would not be worth while.

Q. If you have any recollection on the subject, we will hear it.

A. It is only an impression. I am not positive.

Q. What is that impression?

A. That he paid me at other times—that he paid me some money before.

Q. You were not an officer in the land office, were you?

A. Not at that time; no.

Q. Who ordinarily filled out the declaratory statements and final proofs in the land office there at that time, if you know?

A. I think Mr. Moffat and Mr. Henning.

Q. Who were they?

A. Mr. Henning was register, and Mr. Moffat was his clerk.

65 Cross-examination by Mr. SANBORN:

Q. What was your business there about this time, Mr. Gibson?

A. I was in the exchange business and the banking business. I had an exchange office.

Q. Where was the register's office with reference to your place of business?

A. It was in the front part of the building.

Q. On the same floor?

A. On the same floor.

Q. Did you have anybody interested with you in the business, or were you alone in it—in the business that you were carrying on?

A. In the exchange office?

Q. Yes.

A. Mr. Henning was a partner.

Q. Mr. Henning was the register of the land office?

A. Yes, sir.

Q. And was your partner in this business?

A. Yes, sir.

Q. And did this land-office business in the same room?

A. In the same building—not in the same room.

Q. On the same floor?

A. On the same floor. He had the front part and I had the back part of the building—a building we put up ourselves.

Q. How long were you engaged in that business in that way?

A. I can't tell how many years, I am sure, now. We were engaged in the banking business until we were robbed. I can't tell how many years.

Q. You were in that business during 1854 and 1855?

A. Yes, sir.

Q. There was a good deal of business done in the land office in those days, was there not?

A. Yes, sir.

Q. A large number of entries made?

A. Yes.

Q. And the work of making out the papers was quite laborious?

A. Yes.

Q. Were you accustomed to assist in the making out of these papers when they would get behind or burdened with them?

A. I never made out any unless some one applied to me—some claimant. I never did anything for the office.

Q. You never helped Henning?

A. No; I never made out any for the office.

Q. Are you sure of that?

A. I don't know that I ever did.

Q. Do you speak as a matter of recollection, or is it only your opinion?

A. As far as I can recollect.

Q. How clearly do you recollect those transactions?

A. Which transactions?

Q. These transactions that Mr. Briggs has asked you about. Do you recollect them clearly?

A. No; I should not recollect them if my attention had not been called to the papers.

66 Q. It appears from the papers and your testimony that you made out these papers offered in evidence at three different dates—one dated in 1854 and two in 1855?

A. Yes.

Q. Are you able to recollect those occasions?

A. No, sir.

Q. Are you able to recollect any time that Mr. Stinson asked you to do any business for him, except the one time across the lake?

A. I had done other business for him previous to that; I can't tell when it was.

Q. You were the only man in the place who did this general sort of notarial business and acted as agent for people, were you not?

A. I think I was the only one; yes. I did a very large business in that line.

Q. This was what was called the Willow River land office?

A. That is what it was then.

Q. Do you know how much territory it covered of public lands?

A. It extended from the Mississippi up to Lake Superior at that time.

Q. And east as far as Ashland and Bayfield?

A. Yes, sir.

Q. And south as far as Ochippa Falls, Eau Claire?

A. I don't know just how far it extended. I remember the location of the office to some extent. I was receiver only a few months before that time, and I know what the location was at that time, but I can't tell just how far south it did extend. It was a large district then.

Q. You examined a number of papers here to-day which you stated were not in your hand, did you not?

A. Yes.

Q. Those were papers made out at the same time, or about the same time, as those that you made out?

A. I did not look at the dates; I only looked at the signature.

Q. They were papers in regard to these same entries, were they not, that Mr. Briggs called your attention to?

A. I only looked at the handwriting, not at the dates.

Q. There is what purports to be the receiver's receipt for Laurens Johnson [handing witness a paper]. That is not in your hand, is it?

A. No; I think that is in Charles Dexter's handwriting.

Q. There is a duplicate of that receipt, which is not in your hand, is it?

A. No.

Q. There is the certificate of the register to the effect that Laurens Johnson is entitled to a patent. That is not in your hand, is it?

A. No; that is in Mr. Moffat's handwriting, I think.

Q. What do the dates purport to be on those three certificates?

A. One is October 24, 1854. That [indicating] is the same date.

Q. They are all of the same date?

A. October 24, 1854; yes, sir.

67 Q. I will call your attention to the affidavit of Andreas Svenson to the improvements made by John Johnson, dated October 24, 1854. That is not in your handwriting, is it?

A. That is my handwriting.

Q. Was not your attention called to that by Mr. Briggs, and did you not tell him it was not your writing?

A. Perhaps it was. I don't remember. On looking it over I see it is.

Q. You think now it is your handwriting?

A. Yes, sir; I think it is my handwriting.

Q. Was there any other notary public at Willow River at the time?

A. I think not.

Q. No one who could take the acknowledgment of deeds?

A. I don't know. I am trying to remember whether there was a justice of the peace there or not at that time.

Q. Give us your best recollection.

A. I can't get my mind on any justice now.

Q. As near as you can recollect, then, you were the only person who had power to take acknowledgments?

A. As far as I can recollect now, after thinking the matter all over.

Q. So if Stinson had had some deeds acknowledged in October there, when you went with him from Minnesota back to Willow River, it would

have been necessary to obtain you or some other notary from some other place?

A. Yes.

Q. Before you went to Willow River, where did you live?

A. Pont du Lac.

Q. When did you settle in Wisconsin?

A. In 1844.

Q. Where?

A. In Pont du Lac.

Q. Did you live in Sheboygan?

A. No, sir; I passed through there, simply.

Q. What time were you appointed receiver?

A. I think it was in 1849.

Q. In what year were you born?

A. In 1820.

Q. What was your age when you came to Wisconsin?

A. From 1820 to 1844 would be 24 years.

Q. That is the way you recollect, is it?

A. Yes sir; from 1820 to 1844.

Q. You do not recollect how old you were except by subtracting?

A. No, sir.

Q. Did Mr. Stinson ever pay you any money other than this $20 that you recollect of, for doing work, or for anything?

A. I could only give you my impressions.

Q. You can not give any recollection?

A. I can not give you anything positive in reference to it.

Q. How clearly do you recollect what occurred in those old days,
68 Mr. Gibson? How clearly are you able to recall what occurred back there?

A. It is very difficult to recollect it. The only way I recollect this matter of his paying me this $20 was because it was unusual. I was across the lake and went back again, and it made an impression upon my mind.

Q. You had done other work, acknowledging for him?

A. I had done other work for him.

Q. Making out deeds and taking acknowledgments at other times?

A. Yes, sir. There are three dates here now, and I guess they include everything.

Q. Are you able to say you did not do other work for him?

A. I think not.

Q. Are you able to say so positively?

A. No; I am only giving you my impressions.

Q. Where were you when you went back with him? How far from Hudson?

A. When I went back with Stinson?

Q. Yes.

A. Right across the lake. I met him right there.

Q. He lived in St. Paul at that time?

A. It is only guesswork. I can not tell you anything definite.

Q. You can not recollect where he lived at that time?

A. I think he was stopping for the time at St. Paul.

Q. You said that Mr. Stinson seemed to be doing something about directing or controlling these men. Just state what you can recollect clearly as to what you saw him do.

A. After they had made their proof, and got their duplicate receipts, I saw him talking with them by themselves.

Q. After that?

A. After they got the duplicate receipts.

Q. You did not see him talking with them before that?

A. No.

Q. That is all you saw which led you to think he had anything to do with them?

A. That is what made the impression on my mind.

Q. That is all you saw?

A. Yes; I didn't see anything else except seeing him in conversation with them.

Q. That was after these papers had been made out, that you speak of?

A. After the duplicate receipts had been given to them.

Q. You have had some sickness that affected your head in some way?

A. Somewhat, sir. It affected my memory to some extent. It was an abscess. I took cold at the time of Harrison's inauguration.

Redirect examination by Mr. BRIGGS:

Q. I hand you admitted original affidavit, signed by Andreas Swenson, bearing date October 24, 1854, in regard to the claim of John Johnson, and ask you if that is your handwriting—the body of it?

Mr. SANBORN. Objected to as incompetent, irrelevant, and immaterial.

69 A. It is.

(Counsel for complainants thereupon offered in evidence said paper, and the same is hereunto annexed, marked "Exhibit 19.")

Mr. SANBORN. Objected to as irrelevant, incompetent, and immaterial.

Q. (By Mr. BRIGGS.) Do you recall whether these Swedes were able to talk English or not?

A. I don't know.

Q. Have you any recollection on the subject?

A. I did not have any conversation with them.

Q. Who gave you the facts to put into these various papers which you wrote out?

A. I may be mistaken in my statement that I did not have any conversation with them. It must be that I did have. In order to get the facts to make the statements I must have had some conversation with them.

Q. Either with them or with somebody?

A. Yes. You see I am in a fog there.

Q. Just state what you recollect.

A. I am willing to tell anything I know, but I can't think of everything.

Q. (By Mr. SANBORN.) You do not remember how that was?

A. I am trying to remember, but I can't seem to remember how that matter came up that I drew up these papers for him. I can't get hold of it.

Q. (By Mr. BRIGGS.) Do you remember whether you had any talk with Mr. Stinson in regard to the claims of these various men and the papers to be made out?

A. I don't remember about how those papers were made out or who I talked with. Whether I talked with Stinson or with each one of those men, I can't recollect. If you will give me time I will try to think.

Q. Is it your recollection that you had anything to do with anyone except Stinson or the several persons for whom you were making out papers?

Mr. SANBORN. I object to that as leading.

A. No; there were no other parties.

Q. Do you remember where you were when you drew these papers, or can't you recollect as to that?

A. The probability is I was in my office. I would have to draw them there, I think.

Q. You can not talk Swedish yourself, can you?

A. No; not any.

Q. Could you then?

A. No.

Q. Could you understand the Swedish language?

A. Not any.

Q. Or the Norwegian language?

A. Not any, except "Nix." No; I did not understand the Swedish or Norwegian language at all.

70 Recross-examination by Mr. SANBORN:

Q. For anything you know or can recollect, there may have been an interpreter there, Mr. Gibson?

A. I can not answer that question.

Q. There may have been or there may not?

A. I have forgotten. I am willing to remember anything I can.

Q. A great many Swedish entries were made in those days?

A. Yes.

Q. And entries by Norwegians also in those days?

A. Yes.

Q. Somebody had to understand them to draw their affidavits?

A. Yes.

Q. But you do not recollect anything about who gave you the facts?

A. No.

MOSES S. GIBSON.

Subscribed and sworn to before me this 1st day of April, 1896.

[L. S.]

CHARLES S. BUNDY,
U. S. Commissioner, D. C.

Certificate of Acting Commissioner of General Land Office.

A. D. S.
"G."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Sept. 11, 1900.

I, W. A. Richards, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the following papers on file in this office, viz: No. 1, preemption

D. S. of Otto Wallmark, dated June 22, 1855; No. 2, pre. D. S. of Andrew Wallmark, dated June 11, 1855; No. 3, pre. D. S. of Gustaf Johansson, dated May 21, 1855; No. 4, pre. D. S. of Israel Jansson, dated June 11, 1855; No. 5, preemption affidavit of Sven Larson, dated Oct. 24, 1854; No. 6, affidavit of Laurens Johnson, dated Oct. 24, 1854; No. 7, affidavit of Sven Larson, dated Oct. 24, 1854; No. 8, affidavit of Otto Wallmark, dated June 22, 1855; No. 9, affidavit of Peter Norell, dated Oct. 24, 1854; No. 10, affidavits of Aaron Peterson and John Johnson, dated June 1, 1855; No. 11, affidavit John Johnson, dated June 22, 1855; No. 12, affidavits of Martin Larson and John Johnson, dated June 1, 1855, as to citizenship of Sven Larson; No. 13, preemption affidavit of Andreas Svenson, dated Oct. 24, 1854; No. 14, affidavit of Andreas Svenson, dated Oct. 24, 1854, forming part of the preemption proofs of Lorens Johnson; No. 15, affidavits of Martin Larson and John Johnson as to citizenship of Lorens Johnson, dated June 1, 1855; No.
71 16 pre. affidavit of Lorens Johnson, dated Oct. 24, 1854; No. 17, preemption affidavit of John Johnson, dated Oct. 24, 1854; No. 18, preemption affidavit of Peter Norell, dated Oct. 24, 1854; No. 19, affidavit of Andreas Svenson, dated Oct. 24, 1854, forming part of the preemption proofs of John Johnson; A. Preemption affidavit of Peter Norell, dated Oct. 21, 1854; B. Preemption D. S. of Lorens Johnson, dated Oct. 24, 1854; C. Pre. D. S. of John Johnson, dated Oct. 24, 1854; D. Copy of a copy of the declaration of citizenship of Andrew Svenson, dated July 28, 1854.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

W. A. RICHARDS,
Acting Commissioner of the General Land Office.

EXHIBIT 1.—*Preemption D. S. of Otto Wallmark.*

No. 223.

I, Otto Wallmark, of Douglas County, State of Wisconsin, a single man, past 21, & filed a declaration, citizen of the United States, and have since the first day of June, 1840, to wit, on the 11 day of June, 1855, settled and improved the lots 7, 8, & 9 & NW. ¼ of NE. ¼ of section No. 1, in township No. 48, of range No. 14, in district of land subject to sale at the land office at Willow River, Wis., and containing 142 78/100 acres, which land has not been rendered subject to private entry under the provisions of the act of September 4th, 1851, and I do hereby declare my intention to claim the said tract of land as a preemption right, under the provisions of the act aforesaid.

Given under my hand this 22 day of June, A. D. 1855.

OTTO WALLMARK.

In presence of—
A. M. AHLSTROM, Witness.

(Endorsed:) 233. Otto Wallmark. Set. 11, June. Fil'd 23 June, 1855. Lots 7, 8, & 9 & NW. ¼ of NE. ¼ sec. 1—48—14. 142 78/100 acres.

72 EXHIBIT 2.—*Preemption D. S. of Andrew Wallmark.*

No. 226.

I, Andrew Wallmark, of Douglas County, State of Wisconsin, over the age of twenty-one years, & filed a declaration to become citizen of the United States, and have since the first day of June, 1840, to wit, on the 11 day of June, 1855, settled and improved the NW. quarter of section No. 4, in township No. 48, of range No. 13, in the district of land subject to sale at the land office at Hudson, Wis., and containing 173 57/100 acres, which land has not been rendered subject to private entry under the provisions of the act of September 4th, 1841, and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the act aforesaid.

Given under my hand, this 22 day of June, A. D. 1855.

ANDREW WALLMARK.

In presence of—

——, Witness.

(Endorsed:) 226. Andrew Wallmark. Set. June 11th, 1855. Filed June 23d, 1855. NW. ¼ sec. 4—48—13. 173 57/100 acres.

EXHIBIT 3.—*Preemption D. S. of Gustaf Johansson.*

No. 224.

I, Gustaf Johansson, of Douglas County, State of Wisconsin, a single man, past 21, & filed declaration citizen of the United States, and have since the first day of June, 1840, to wit, on the 21 day of May, 1855, settled and improved the lots 1, 2, & 3 of section No. 1, in township No. 48, of range No. 14, in district of land subject to sale at the land office at Willow River, Wis., and containing 145.58 acres, which land has not been rendered subject to private entry under the provisions of the act of September 4th, 1851, and I do hereby declare my intention to claim the said tract of land as a preemption right, under the provisions of the act aforesaid.

Given under my hand this 22 day of June, A. D. 185—.

GUSTAV his x mark JOHANSSON.

In presence of—

OTTO WALLMARK, Witness.

(Endorsed:) 224. Gustaf Johansson. Set. 21 May. Fil'd 23d June, '55. Lots 1, 2, & 3. Sec. 1, 48, 14. 145 58/100 acres.

73 EXHIBIT 4.—*Preemption D. S. of Israel Jansson.*

No. 225.

I, Israel Jansson, of Douglas County, State of Wisconsin, single man past 21 & filed declaration to be citizen of the United States, and have since the first day of June, 1840, to wit, on the 11 day of June, 1855, settled and improved the NE. quarter of section No. 5, in township No. 48, of range No. 13, in district of land subject to sale at the land office

at Willow River, Wis., and containing 172.88 acres, which land has not been rendered subject to private entry under the provisions of the act of September 4th, 1851, and I do hereby declare my intention to claim the said tract of land as a preemption right, under the provisions of the act aforesaid.

Given under my hand this 22 day of June, A. D. 1855.

his
ISRAEL X JANSSON.
mark.

In presence of
A. M. AHLSTROM, witness.

(Endorsed:) 225. Israel Jansson. Set. June 11/55. Fil'd June 23/55. NE. ¼ sec. 5, 48, 13. 172 88/100 acres.

EXHIBIT 5.—*Preemption affidavit of Sven Larson.*

I, Sven Larson, of the county of Douglas, State of Wisconsin, claiming the right of preemption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant the preemption rights," approved September 4th, 1841, to the northwest quarter of section number thirty-five, of township number forty-nine N., of range number fourteen W., subject to sale at Willow River, do solemnly swear that I have never had the benefit of any right of preemption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

SVEN LARSON.

(Original.)

74 I, J. O. Henning, regr. of the land office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Register.*

108.

EXHIBIT 6.—*Affidavit of Laurens Johnson.*

LAND OFFICE, WILLOW RIVER, *Oct. 24, 1854.*

Andreas Svenson applied to prove his preemption to SW. ¼ of sec. 28, T. 49, R. 14. Declaration filed Oct. 24; settled Sept. 28, 1854.

I, Laurens Johnson, of Douglas County, Wis., do solemnly swear that I am acquainted with Andreas Svenson, of said county; that he is a married man & filed a declaration to become a citizen of the United States; that he commenced improvements & made a settlement on the southwest qr. of sec. No. twenty-eight, in township No. forty-nine, of

range fourteen, on the twenty-eighth day of Sept., 1854; at that time he commenced the erection of a dwelling house, which he continued working at until completed, at which time he moved into and has continued to occupy. Said house is built of logs, about 12 by 14 feet on the ground, one story high, with fireplace, &c., and is a comfortable residence. He has also cleared a parcel of land ready for cultivation & cut a quantity of rails on said land, and I have reason to believe he intends making additional improvements on said land. He has not quit his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his procuring a title to said land.

his
LAURENS x JOHNSON.
mark.

Subscribed & sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

(Endorsed:) Land office, Willow River, Oct. 24, 1854. Entry No. 1847. Preemp. proof of Andreas Svenson, D. S. No. 179, for SW. ¼ 28, 49, 14; Sept. 28 & Oct. 24, 1854, unoffered. G. L. O. No proof of citizenship. See letter to R. & R., 27 January, 1855, and reply, 12 March, 1855. Also letter to R. & R. of 26th April and 20th July, 1855, G. L. O. Approved. See letter to R. & R., Sept. 10th, 1855. W. D. P.

75 EXHIBIT 7.—*Affidavit of Sven Larson.*

LAND OFFICE, WILLOW RIVER, *Oct. 24, 1854.*

Peter Norell applied to prove his right of preemption to SW. ¼ of sec. 35, T. 49, R. 14. Declaration filed Oct. 24. Settled Sept. 27, 1854.

Sven Larson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Peter Norell, of said county; that he is a single man, past the age of twenty-one years, & filed a declaration to become a citizen of the United States; that he made a settlement & commenced improvements on the southwest qur. of sec. No. thirty-five, in township No. forty-nine, of range No. fourteen, on the 27th day of Sept., 1854; that at that time he commenced the erection of a dwelling house which he continued to work upon until completed, at which time he moved into and has continued to occupy. Said house is built of logs, one story high, is about 14 feet square on the ground, with roof, door, window, &c., and is a good comfortable residence. He has also cleared a piece of ground ready for cultivation and split a quantity of rails on said land, and I believe he has claimed said land in good faith and for a home for himself. He has not quit his residence on his own lands for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

SVEN LARSON.

Subscribed & sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

(Endorsed:) Land office, Willow River, Oct. 24, 1854. Entry No. 1849. Preemp. proof of Peter Norell; D. S. No. 181, for SW. ¼, 35, 49, 14; 27 Sept., & 24 Oct., 1854. Unoffered land. G. L. O. No proof of citizenship. See letter to R. & R., 27 January, 1855. Also letters of 26th of April and 20th July, 1855. G. L. O. Approved. See letters to D. Cooper and to R. & R., 10th Sept., 1855. W. D. P. To Hon. W. T. Price, Oct. 30 86. S. S. T. To Secy., June 3, '85. S. S. T.

76 EXHIBIT 8.—*Affidavit of Otto Wallmark.*

LAND OFFICE, HUDSON, *June 22, 1855.*

Gustaf Johansson applied to prove his right of preemption to lots 1, 2, & 3, of sec. 1, T. 48, R. 14. Set May 21. Filed June 22, 1855.

I, Otto Wallmark, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Gustaf Johansson, of said county & State; that he is a single man, past the age of 21 years, & filed a declaration to become a citizen of the United States prior to 21 May, 1855; that on the 21 day of May, 1855, he made a settlement & commenced improvements on lots 1, 2, & 3, in sec. one, township 48, of range 14; that at that time he commenced the erection of a dwelling house on said lot No. 2, which he completed about the 1st of June, when he moved into it and has continued to occupy till the present time. Said house is built of logs, one story high, about 14 by 14 feet on the ground, with roof, chimney, door, & window, and is a comfortable residence for himself. He has also cleared some two acres of timbered land ready for cultivation on 1 & 3, and has cut a quantity of rails on said lots, and I believe he intends making additional improvements on said land for agricultural purposes. He has not quit or abandoned his residence on his own lands in this State for the purpose of making said preemption, neither am I in any manner interested in his procuring a title to said land.

his
OTTO x WALLMARK.
mark.

Subscribed & sworn before me this 22nd day of June, 1855.

J. O. HENNING, *Register.*

Witness, M. S. GIBSON.

STATE OF WISCONSIN, *St. Croix County, ss:*

I, John O. Henning, late register of the land office at Hudson, Wisconsin, having been duly sworn, depose and say that the enclosed affidavit of Otto Wallmark was taken before me as register of said land office on the 22d of June, 1855, and that I neglected to subscribe my name thereto at that time, as should have been properly done.

J. O. HENNING.

Subscribed and sworn before me this 8th day of September, 1857.

T. RUSH SPENCER,
Register, Land Office, Hudson, Wis.

(Endorsed:) Affidavit of John O. Henning. C. E. 3209. G. Preemption proof of Gustaf Johanson.

77 EXHIBIT 9.—*Affidavit of Peter Norell.*

LAND OFFICE, WILLOW RIVER, *Oct. 24, 1854.*

Sven Larson applied to prove his right of preemption to NW. ¼ sec. 35, T. 49, R. 14; declaration filed Oct. 24, settled Sept. 26, 1854.

I, Peter Norell, of Douglass, Wisconsin, do solemnly swear that I am acquainted with Sven Larson, of said county; that he is a single man past the age of twenty-one years & filed a declaration to become a citizen of the United States; that on the twenty-sixth day of September, 1854, he made a settlement and commenc'd improving the northwest quarter of sec. No. thirty-five, in township No. forty-nine of range No. fourteen; that at that time he commenced the erection of a dwelling house and continued working upon until completed, at which time he moved into it and has continued to occupy until the present time. Said house is built of logs, one story high, about 14 by 14 feet on the ground, with door, &c., and is a good, comfortable residence. He has also clearing a parcel of land ready for cultivation & has cut a quantity of rails on said land, and I have reason to believe he intends making additional improvements for agricultural purposes. He has not quit his residence on his own lands in this State for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

his
PETER x NORELL.
mark

Subscribed & sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

(Endorsed:) Land Office, Willow River, Oct. 24, 1854. Entry No. 1850. Preemp. proof of Svens Larson, D. S. No. 180, for NW. ¼ 35, 49, 14. Sept. 26 & Oct. 24, 1854. Unoffered land. G. L. O. See letter to R. & R., 27 January, 1855. Also letters of 26th April, 20th July, 1855. G. L. O. Approved. See letter to R. & R., September 10th, 1855. W. D. P. To Hon. W. T. Price. Oct. 30th, '86. S. S. T. To Secy., June 3/85, S. S. T.

78 EXHIBIT 10.—*Affidavit of Aaron Petterson and John Johnson.*

STATE OF WISCONSIN, *County of St. Croix, ss:*

We, Aron Petterson and John Johnson, of Douglas County, Wisconsin, do solemnly swear that we are acquainted with Andreas Svenson, of Douglas County; that previous to the 28th day of Sept., 1854, he filed his declaration to become a citizen of the United States, according to the laws regulating the same, & further these deponents saith not.

his
ARON x PETTERSON.
mark
his
JOHN x JOHNSON.
mark

Subscribed & sworn before me this 1st day of June, 1855.

[SEAL.]

M. S. GIBSON, *Notary Public.*

(Endorsed:) Land Office, Hudson. June 4, 1855. Proof of citizenship of Andreas Svenson. Received in register's letter 4th June, 1855. See letter to R. & R. of 20th July, 1855.

EXHIBIT 11.—*Affidavit of John Johnson.*

LAND OFFICE, HUDSON, *June 22, 1855.*

John Johnson, of Douglass County, Wisconsin, applied to prove his right of preemption to NW. ¼ sec. one, T. 48, R. 14. Set. 26 Sept., 1854, filed Oct. 24, 1854.

I, John Johnson, of Douglass County, Wisconsin, do solemnly swear that I am acquainted John Johnson, of said county and State; that he is a marr'ed man and a citizen of the United States; that on the 26 day of Sept., 1854, he made a settlement and commenced improving the NW. ¼ of sec. one, township 48, range 14. At that time he commenced the erection of of a dwelling house on said land, which he completed about the 10th day of Oct., 1855, at which time he moved into it & has made his home & continued to occupy; said house is about 14 by 14 feet on the ground, built of logs, one story high, with roof, door, window, & chimney, and is a good, comfortable residence for himself and family. He has also
79 cleared some two acres or more of timbered land ready for cultivation and split a quantity of rails on said land, and I believe he intends making additional improvements on said land for agricultural purposes. He has not quit or abandoned his residence on his own lands in this State for the purpose of making said preemption; neither am I in any manner interested in his procuring a title to said land.

his
JOHN x JOHNSON.
mark.

Subscribed & sworn before me this 22 day of June, 1855.

J. O. HENNING, *Register.*

Witness, M. S. GIBSON.

EXHIBIT 12.—*Affidavit of Martin Larson and John Johnson.*

STATE OF WISCONSIN, *County of St. Croix, ss:*

We, Martin Larson and John Johnson, of Douglas Co., Wis., do solemnly swear that we are acquainted with Sven Larson, of Douglas Co.; that previous to the 26th day of Sept., 1854, he filed his declaration to become a citizen of the United States according to the laws regulating the same, and further these deponents saith not.

MARTIN LARS SON.
his
JOHN x JOHNSON.
mark.

Subscribed & sworn before me this 1st day of June, 1855.

[SEAL.] M. S. GIBSON, *Notary Public.*

(Endorsed:) Land Office, Hudson, Wis., June 4, 1855. Proof of citizenship of Sven Larson. Received with register's letter 4th June, 1855, & see letter to R. & R. of 20th July, 1855.

80 EXHIBIT 13.—*Preemption affidavit of Andreas Svenson.*

I, Andreas Svenson, of the county of Douglas, State of Wisconsin, claiming the right of preemption, under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant preemption rights," approved September 4th, 1841, to the southwest quarter of section number twenty-eight of township number forty-nine N. of range number fourteen W., subject to sale at Willow River, do solemnly swear that I have never had the benefit of any right of preemption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory in the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way of manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

Original.

his
ANDREAS x SVENSON.
mark.

I, J. O. Henning, Rgt. of the Land Office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Register.*

EXHIBIT 14.—*Affidavit of Andreas Swenson.*

LAND OFFICE, WILLOW RIVER, *Oct. 24, 1854.*

Lorens Johnson applied to prove his preemption to NW. ¼ of sec. 33, T. 49, R. 14; declaration filed Oct. 24, settled Sept. 28, 1854.

I, Andreas Svenson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Lorens Johnson, of said county; that he is a married man and filed a declaration to become a citizen of the United States; that on the 28th day of Sept., 1854, he settled upon & commenced improving the northwest qr. of sec. No. thirty-three in township No. forty-nine N. of range No. fourteen W. At the time he commenced
81 the erection of a dwelling house on said land and continued working upon until finished, at which time he moved into & has continued to occupy. Said house is built of logs, one story high, about 14 by 16 feet on the ground, with roof, door, window, &c., and is a good & comfortable residence. He has also cleared a tract of ground ready for cultivation and has cut a quantity of rails on said place, and I have reason to believe he has cleared said land in good faith for a home for himself. He has not quit or abandoned his residence on his own land for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

ANDREAS SWENSON.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

(Endorsed:) Hudson land office, Willow River. Oct. 24, 1854. Entry No. 1851. Pre-Emp. proof of Lorens Johnson, D. C. No. 182, for NW. ¼ 33, 49, 14, 28 Sept. & 24 Oct. 1854. Unoffered. G. L. O. See letter to R. & R. 27th of January, 1855. Also letters of 26th April and 20th of July, 1855. G. L. O. Approved. See letter to R. & R. September 10th, 1855. W. D. P. To Hon. W. T. Price, Oct. 30, '86. S. S. T. To Secy., June 3, '85. S. S. T.

EXHIBIT 15.—*Affidavit of Martin Larson and John Johnson.*

STATE OF WISCONSIN, *County of St. Croix, ss:*

We, Martin Larson and John Johnson, of Douglas County, Wisconsin, do solemnly swear that we are acquainted with Larons Johnson; that previous to the 28th day of September, 1854, he filed his declaration to become a citizen of the United States according to the laws regulating the same, and further these deponents saith not.

MARTIN LARS SON.
his
JOHN X JOHNSON.
mark

Subscribed & sworn before me this 1st day of June, 1855.

[SEAL.] M. S. GIBSON, *Notary Public.*

(Endorsed:) Land office, Hudson, June 4, 1855. Proof of citizenship of Lorens Johnson. Received with register letter, 4th June, 1855. See letter to R. & R. of 20th July, 1855.

82 EXHIBIT 16.—*Preemption affidavit of Lorens Johnson.*

I, Lorens Johnson, of the county of Douglas, State of Wisconsin, claiming the right of preemption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant preemption rights," approved September 4th, 1841, to the northwest quarter of section number thirty-three of township number forty-nine N., of range number fourteen W., subject to sale at Willow River, do solemnly swear that I have never had the benefit of any right of preemption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory in the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

Original.

his
LORENS X JOHNSON.
mark

I, J. O. Henning, regr. of the land office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Register.*

EXHIBIT 17.—*Preemption affidavit of John Johnson.*

I, John Johnson, of the county of Douglass, State of Wisconsin, claiming the right of preemption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant preemption rights," approved September 4th, 1841, to the northwest quarter of section number twenty-six of township number forty-nine N., of range number fourteen W., subject to sale at Willow River, do solemnly swear that I have never had the benefit of any right of preemption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory in the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

83

Original.

his
JOHN X JOHNSON.
mark

I, J. O. Henning, regr. of the land office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Register.*

EXHIBIT 18.—*Preemption affidavit of Peter Norell.*

I, Peter Norell, of the county of Douglass, State of Wisconsin, claiming the right of preemption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant preemption rights," approved September 4th, 1841, to the southwest quarter of section number thirty-five of township number forty-nine N., of range number fourteen W., subject to sale at Willow River, do solemnly swear that I have never had the benefit of any right of preemption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory in the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

Original.

his
PETER X NORELL.
mark

I, J. O. Henning, regr. of the land office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Regr.*

84 EXHIBIT 19.—*Affidavit of Andreas Svenson.*

LAND OFFICE, WILLOW RIVER, *Oct. 24, 1854.*

John Johnson applied to prove his preemption to northwest qr. sec. 26, T. 49, R. 15, declaration filed Oct. 24, settled Sept. 27, 1854.

I, Andreas Svenson, of Douglas County, Wis., being sworn, depose and say that I am acquainted with John Johnson, of said county; that he is a single man past the age of twenty-one years, and filed a declaration to become a citizen of the United States; has on the 27 day of Sept., 1854, settled & commenced improvements on the northwest qr. of sec. twenty-six in township No. forty-nine, of range No. fourteen; at that time he commenced the erection of a house, which he had completed and has occupied to the present time; said house is built of logs, about 12 by 14 feet, with door, fireplace, &c., and is a comfortable residence for himself. He has cleared a piece of ground & cut a quantity of rails, and I have reason to believe he intends to make additional improvements on said land for farming purposes. He has not quit or abandoned his residence on his own lands for the purpose of making said preemption, nor am I in any manner interested in his securing a title to said land.

ANDREAS SWENSON.

Subscribed & sworn before me this 24 day of Octo., 1854.

J. O. HENNING, *Register.*

Subscribed & sworn before me this.

(Endorsed:) Land office, Willow River, Oct. 24, 1854. Entry No. 1848. Preemp. proof of John Johnson, D. S. No. 178, for N. W. ¼ 26, 49, 14, 27 Sept. & 24 October, 1854. Unoffered lands. G. L. O. See letter to R. & R., 27th of January, 1855. Also letters of 26th April and 20th of July, 1855. G. L. O. Approved. See letter to R. & R., September 10th, 1855. See letter to John T. Morgan, January 26, & June 16, 1856. Superior, Wisconsin, Nov. 30, '87. Cert. copy to E. Rotis. S. S. T.

A.—*Preemption affidavit of Peter Norell.*

I, Peter Norell, of Douglas County, Wisconsin, being a single man over the age of twenty-one years, and a citizen of the United States, have since the 4th day of September, 1841, to wit: On the 27th day of September, 1854, settled and improved the (S. W. ¼) southwest quarter section No. 35, town. No. 49 north, of range No. 14 west, in the
85 district of lands subject to sale at the land office at Willow River, containing 160 acres, which land is not subject to private entry since the passage of the act of September 4, 1841; and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the said act of 4th September, 1841.

Given under my hand this 21st day of October, A. D. 1854.

his
PETER x NORELL.
mark.

Signed in presence of—
SVEN LARSON.
A. M. AHLSTROM.

No. 181.

(Endorsed:) No. 181. Peter Norrell. Set. Sep. 27. Filed Oct. 24. S. W. ¼ sec. 35, T. 49, R. 14.

B.—*Preemption D. S. of Lorens Johnson.*

No. 182.

I, Lorens Johnson, of Douglas County, State of Wisconsin, a married man & filed declaration to beem citizen of the United States and have since the first day of June, 1840, to wit, on the 28th day of September, 1854, settled and improved the NW. ¼ quarter of section No. 33, in Township 49 N. of Range No. 14 west, in district of land subject to sale at the land office at Willow River, Wis., and containing 160 acres, which land has not been rendered subject to private entry under the provisions of the act of September 4th, 1851; and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the act aforesaid.

Given under my hand this 24th day of October, A. D. 1854.

his
LORENS x JOHNSON.
mark.

In presence of—
M. S. GIBSON, witness.

(Endorsed:) 182. Lorens Johnson. Set. Sep. 28. Filed Oct. 24. NW. ¼ sec. 33, T. 49, R. 14. 160 acres.

C.—*Preemption D. S. of John Johnson.*

I, John Johnson, of Douglas County, Wisconsin, being a married man over the age of twenty-one years and a citizen of the United States, have since the 4th day of September, 1841, to wit, on the 26th day of
86 September, 1854, settled and improved the northwest (NW. ¼) of section No. 1, Town. No. 48 north of Range No. 14 west, in the district of lands subject to sale at the land office at Willow River, containing 161.60 acres, which land has not been rendered subject to private entry since the passage of the act of September 4, 1841; and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the said act of 4th September, 1841.

Given under my hand this 21st day of October, 1854.

his
JOHN x JOHNSON.
mark.

Signed in presence of—
A. M. AHLSTROM.
SVEN LARSON.

(Endorsed:) 185. John Johnson. Set. Sept. 26 fil. Oct. 24. NW. ¼ sec. 1, T. 48, R. 14. Plat not received.

D.—*Declaration of citizenship of Andrew Svenson.*

TERRITORY OF MINNESOTA, *Washington County, ss:*

I, Andrew Swenson, do hereby upon my oath declare that I first arrived in the United States on or about the 25th day of September, in

the year 1853, and that I have ever since that time continued to reside in the United States, and that it is bona fide my intention to become a citizen of the United States and to renounce forever all allegiance and fidelity which I in any wise owe to any foreign prince, potentate, State, or sovereignty, and particularly all allegiance and fidelity which I owe to Oscar, the 1st King of Sweden, of whom I have heretofore been a subject.

ANDREW SWENSON.

Sworn to and subscribed before me this 28th day of July, 1854.

HARVEY WILSON,
Clerk District Court.

TERRITORY OF MINNESOTA, *Washington County, ss:*

I hereby certify that the foregoing is a true copy of the original declaration of intention of Andrew Swenson, this day filed in my office.

In testimony whereof I have hereunto set my hand and affixed
87 the seal of the district of Washington County aforesaid this 28th day of July, 1854.

[SEAL]

HARVEY WILSON,
Clerk of said Court.

TERRITORY OF MINNESOTA, *Washington County, ss:*

I, Andrew Swensen, do solemnly swear that I will support the Constitution of the United States and the provisions of the Act of Congress organizing the Territorial Government of Minnesota. So help me God.

ANDREAS SWENSON.

Sworn to and subscribed before me this 28th day of July, 1854.

HARVEY WILSON,
Clerk District Court.

(Endorsed:) 279 B. Received in letter of Hon. D. Cooper 6 August, 1855. Filed Sep. 14, 1900. F. W. Oakley, clerk. 1900–99148–5.

Certificate of U. S. Commissioner.

In the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs.
JAMES STINSON AND HENRY J. STINSON.

Deposition of Moses S. Gibson, a witness for the complainant.

UNITED STATES OF AMERICA, *District of Columbia, ss.*

I certify that on the 1st day of April, A. D. 1896, before me, Charles S. Bundy, a commissioner of the United States in and for the District of Columbia, at my office in the city of Washington, in said District, No. 456 La. avenue, was produced and personally appeared before me, Moses S. Gibson, the witness named in the notice hereto annexed, and

H. E. Briggs, esq., U. S. Dist. Atty., appeared as counsel for the plaintiff, and A. L. Sanborn, esq., appeared as counsel for the defendant, and the said Moses S. Gibson being by me first each severally duly cautioned and sworn to testify the whole truth, and being carefully examined, each deposed and said, as appeared by the depositions hereto annexed.

88 I further certify that notice of the time and place of the taking of the said deposition, and the names of the witnesses to be examined, signed by attys. for both parties is hereunto attached.

And I further certify that the deposition of each witness was then and there taken stenographically by John W. Hulse, and was, after it had been reduced to typewriting, subscribed by the witness.

And I further certify that the reason why the said deposition was taken, is that the said witness resides at Forest Glenn, in State of Maryland, more than one hundred miles from Madison, the place where this cause is to be tried, and is ancient and infirm.

And I further certify that I am not of counsel or attorney to either of the parties, nor interested in the result of this cause.

And I further certify that the fee for taking said deposition, $16.00, has been charged to the United States, and that the same is just and reasonable.

In testimony whereof, I have hereunto set my hand and official seal, at the city of Washington, in said District of Columbia, this 1st day of April, A. D. 1896.

[L. S.]

CHARLES S. BUNDY, [SEAL]
U. S. Commissioner, D. C.

(Endorsed:) No. . . . In the circuit court of the United States for the western district of Wisconsin. United States vs. Stinson & Stinson. Deposition of Moses S. Gibson. Taken before Charles S. Bundy, U. S. commissioner in and for the District of Columbia.

Stipulation as to testimony of Ambrose B. Burbank.

April 15, 1896, filed deposition of Ambrose B. Burbank, as follows:

Circuit court of the United States, for the western district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON AND HENRY J. STINSON.

It is hereby stipulated that the testimony of Ambrose B. Burbank, a witness on the part of the complainant, may be taken by deposition de bene esse by and before John A. Shields, a United States circuit court commissioner for the southern district of New York, at his office in the city of New York, on the 31st day of March, 1896, at the hour of ten o'clock in the forenoon.

JAMES G. FLANDERS &
H. E. BRIGGS,
Solicitors for Complainant.

SPOONER, SANBORN, KERR & SPOONER,
Solicitors for Defendants.

89 Circuit court of the United States. Western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Deposition of Ambrose B. Burbank, taken by and before John A. Shields, United States court commissioner for the southern district of New York, at his office in the United States court-house building, in the city of New York in said district, on the 31st day of March, 1896, at 10 o'clock in the forenoon, pursuant to a stipulation of the parties hereto attached.

It is stipulated that the testimony of the witness, Ambrose B. Burbank, may be taken down in shorthand by Frank D. Curtis, and afterwards extended on the typewriter with the same force and effect as if taken down by the commissioner personally, and that the reading over of the deposition to the witness and the signature thereto are hereby waived.

Appearances: H. E. Briggs, U. S. district attorney for the western district of Wisconsin, for the complainant. A. L. Sanborn, for the defendants.

Deposition of Ambrose B. Burbank.

AMBROSE B. BURBANK, being duly and publicly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. BRIGGS:

1. Q. Mr. Burbank, where do you live?

A. I live now in the city of New York.

2. Q. How long have you lived there?

A. I came here in 1861; about 35 years ago.

3. Q. What is your business?

A. I don't do much of anything except looking after some bonds which I have got, and getting paid the interest on them and reinvesting.

4. Q. You are a man of independent means, are you not?

A. I don't owe anybody anything, and I have got enough to live on.

5. Q. What is your age?

A. I am 86 years old.

90 6. Q. Were you at or near Superior, in Douglas County, in the State of Wisconsin, in the year 1855?

A. I was.

7. Q. Did you make or seek to make a filing upon any public land in that county?

A. Yes, sir.

8. Q. What was the description of the land, if you recall it?

A. It was the southeast quarter of section 1, township 48, range 14 west, known as lots 1, 2, and 3, in Douglas County, in the State of Wisconsin.

9. Q. That quarter section consisted of these three lots, did it not?

A. Yes, sir. From the formation of the quarter section they made three lots of it.

10. Q. Did you file a declaration for that land?

A. I did.

11. Q. It was a preemption claim, was it not?

A. Yes, sir.

12. Q. Was there any other filing upon that land, any other preemption claim made before yours or afterwards?

A. I was told there was.

13. Q. Who was it that had made a filing upon this land?

A. I was told that it was Gustaf Johanson.

14. Q. Gustaf Johanson or Johnson?

A. He spelled it "G-u-s-t-a-f J-o-h-a-n-s-o-n." He might have been called Johnson, but Johanson I call him.

15. Q. State in your own way the facts in regard to your filing; state what happened?

A. At or about the time, or shortly after filing my declaration on said claim, I learned that a prior claim of mine had been made to said quarter section by one of James Stinson's hireling preemptors by the name of Gustaf Johanson.

16. Q. In what year was it that you made your filing?

A. It was in 1855.

17. Q. Go on.

A. It was by Gustaf Johanson, a Swede. I then went all over said claim to see if the said Johnson had made any improvements on said claim, and I found none that could be so called; and having been assured by the pioneer citizens of Superior——

(Objected to by defendant's counsel as incompetent and hearsay.)

A. (Continued.) That the said Johanson's claim on said described quarter section was a fraud upon the General Government and a shameful violation of the preemption law. At or about the first of July, 1855, I went in person upon said claim and made it my place of residence, and commenced valuable improvements by building, clearing, and cultivating crops thereon, and so continued up to September 20, 1858. I had done everything necessary in good faith under the preemption act to enable me to prove up on said claim, and during my occupancy
91 upon said claim of three years I had made frequent calls upon a Mr. Dean, then land agent at Superior, to allow me to prove on said claim, and was restrained each time by said land agent from doing so without his assigning any cause for so doing. It was my solemn belief and the expressed opinion of the pioneer citizens of Superior that said land agent at Superior——

(Defendant's counsel objects to this evidence because the witness is reading from a paper written by some person, and is not testifying in answer to any question, and moves to strike out all of the foregoing answer.)

18. Q. After you learned that Gustaf Johanson had a prior claim to this land, state whether or not you examined the claim to see what if any improvements had been made by the said Johnson or Johanson?

A. I did.

19. Q. What improvements, if any, did you find?

A. I could not call it any improvements at all. There was some few poles thrown together, and that would not take him more than two or three hours to do. I could not call it any improvement. I wish to say another thing. This Johanson in the three years that I occupied the place never put in an appearance, and nobody ever knew of such a man in that section.

20. Q. You never saw him yourself?

A. I never saw him myself and nobody else that I was acquainted with had ever seen him.

(Defendant's counsel objects to and moves to strike out the latter part of the answer as to what other people did or did not know or had told him.)

21. Q. When did you go upon the claim, if at all, for the purpose of making it your place of residence?

A. About the first of July in 1855. Somewhere near there; within a few days anyhow.

22. Q. What did you do?

A. I went to improving it and made it my place of abode or residence, I went to building, clearing, planting, and croping. I remained about three years, and I was badly treated too.

23. Q. How long did you continue to live upon the land?

A. Up to the 20th of September, 1858.

24. Q. At any time or times during the period when you lived upon the land did you go to the land office to prove up on your claim?

A. Yes; several times; three or four times.

25. Q. Who was the land agent at that time?

A. Dean.

26. Q. Why didn't you prove up?

A. Well, he assigned no cause or reason for not letting me prove up. I had a lawyer, Hayes, and a little lawyer, his partner, and he would not let me prove up.

27. Q. Was Dean a Government officer?

A. He was so considered, yes.

28. Q. Did he give any reason why you should not prove up or
92 ought not to prove up?

A. No; never assigned any reason at all.

28. Q. Or tell you that you were not entitled to prove up?

A. He said he would not let me. That is about all; I knew devlish well the reason.

30. Q. When did you first see James Stinson to become acquainted with him?

A. I think one day when I was at work on my claim.

31. Q. About what year?

A. I think it was in 1856. He and his father, an old gentleman, came there and I was working on my potato patch; I had a pretty large potato patch, and they seemed to be clever sort of folks.

32. Q. What if any conversation did you have with James Stinson?

A. I don't think there was very much said only that he seemed to have a right there or something.

33. Q. Did he claim to have any right there?

A. Well, through some man that he had employed. There was not very much said about it. He understood how it was, and so forth, and wanted to know if I had any money to loan; I recollect that. It was while I was at work hoeing potatoes, and so forth, when he came to see me, and we didn't have much to say.

34. Q. Did you ever at any time have any talk with Mr. Stinson with reference to his buying you out or buying you off from your claim?

A. Not until about the 20th of September, 1858.

35. Q. Did you then have a talk with him?

A. Then the question was spoken of.

36. Q. By whom?

A. I think that Stinson and myself had no talk directly, but this was through a second party. The propositions were made through him.

37. Q. Who was the second party, if you remember?

A. I think a Mr. Alexander Paul, who was a merchant there.

38. Q. What proposition was made to you by Mr. Paul, if any?

(Objected to by defendant's counsel as incompetent, irrelevant, and immaterial.)

A. That he would give $1,500 or give his obligation for that amount when he procured the patent.

39. Q. When who secured the patent?

A. Either through Gustaf Johanson or some one else. There was something said about if he got a certain lot of scrip himself.

40. Q. And who was to get the patent, Mr. Paul?

A. He was to get the patent.

41. Q. Paul?

A. Through somebody else.

42. Q. Was Mr. Paul representing himself of somebody else in this conversation with you, if you know?

(Objected to by defendant's counsel as incompetent, immaterial, and irrelevant.)

93 A. He was a friend of mine, a merchant that I had known in Superior, who was generally known there.

43. Q. State if you know whether or not he was acting as the agent for James Stinson.

(Objected to by defendant's counsel, incompetent, immaterial, and irrelevant.)

A. I don't know what you call it. The proposition was handed to me from Stinson what he would do.

44. Q. Was it a written proposition?

A. Yes, sir; a written proposition. I think in Stinson's hand, too. I am not sure about that. I think it was in Stinson's handwriting.

45. Q. Do you know whether or not the proposition came from Stinson?

A. Yes; I think it was his. There is no doubt about that.

46. Q. How much was to be paid to you when the patent was gotten for the land?

A. $1,500, but I never got but about $500.

47. Q. When did you get the $500?

A. That was some time after the war, I think. There was a George Morrison and I wrote to him consenting to this obligation.

(Answer objected to by defendant's counsel as incompetent, immaterial, and ir'elevant.)

48. Q. Who was this George Morrison?

A. He was register.

49. Q. Of the Land Office?

A. Register of deeds.

50. Q. At Superior?

A. I think so, register of deeds there.

51. Q. This obligation you have spoken of was in writing; have you that obligation?

A. No; I sent it to this George Morrison and he wrote me that he could do thus and so, and I think he played smart on me, too. It had been some time after the war and I sort of did not count it of very much worth, but he said he could do thus and thus, that Stinson would do thus and so, and that I could get, say, $500. I got a check upon the Chemical Bank——

(Defendant's counsel objects to what Morrison told him what Stinson would do, as incompetent, immaterial, and irrelevant.)

52. Q. By whom was the check signed?

A. I think George Morrison reported to me——

(Same objection by defendant's counsel.)

A. (Continued.) That Stinson would pay $1,000 upon that obligation and I understood he made the statement to speculate on me a little.

53. Q. You got $500 in a check?

A. Yes sir.

54. Q. By whom was the check signed?

A. I cannot say. It was on the Chemical Bank.

55. Q. What is your best recollection as to who signed the check?

A. It was Stinson, of course. He did business through the
94 Chemical Bank. It was the best bank in the city. Of course it was through Stinson. There is no doubt about that.

56. Q. And your best recollection is that the check was signed by Stinson?

(Objected to as leading.)

A. Yes, sir.

57. Q. What is your best recollection as to the signature on the check?

A. George Morrison had no money and that check would not have passed in the Chemical Bank if his name had been to it. That is reasonable to suppose. It must have been from Stinson; certainly from Stinson.

58. Q. Had George Morrison ever had any interest in any way at all in your claim up there?

A. No; nothing at all.

59. Q. How came you to let the matter rest from 1858 until after the war?

A. Good God, it was the war. We were all interested in the war and things were all by the ears because of the war and everything looked as though it was going to the devil.

60. Q. Did you ever have at any time any talk with James Stinson yourself in regard to buying your claim or your giving up your claim?

A. Well, I don't know. I could not say for certain, but I think Stinson, when I saw him when he came to the quarter section where I was at work in the potato patch, might have said something. There might have been something said to me if I would give it up, or something like that, and I think probably there might have been something of that kind said.

61. Q. You say that a proposition was handed to you by this Mr. Alexander Paul in 1858—that the proposition was handed you?

A. I think it was.

62. Q. Did Mr. Paul himself have any interest in your claim or had he ever claimed any?

A. Nobody had any interest at all.

63. Q. And that proposition, as just stated and as you recall, was a written proposition?

A. A written proposition, and I understood from James Stinson.

64. Q. Have you that proposition.

A. Now?

65. Q. Yes, sir.

A. God knows where it is. Half of my papers I have not got. A good deal of them have been lost.

66. Q. State the substance of the proposition?

A. The proposition was that he would give me $1,500 or give his obligation for $1,500 as soon as he procured a patent through this Gustaf Johanson, or in any other way.

67. Q. Did you file any relinquishment of your claim, do you remember, or did you just move off and quit? What did you do?

A. I don't remember filing anything of that kind. I don't think I did.

68. Q. Did you abandon the claim—move off?

95 A. Of course after I had sold out I did not make my appearance there again. I hired a Swede and his wife. The Swede was a big woodsman who could handle an ax nicely and his wife was a good house woman, and they lived there. They had a cow and chickens and planted some apple trees and intended to stay there all the time. The man's name was Weaver. He was a Norwegian hired on the place and stayed there and he and I worked together chopping trees.

69. Q. You hired him while you were living on the place?

A. Yes, sir; and we cleared up, I think, six or seven acres of wood land right upon the river.

70. Q. Now, after this proposition was handed to you by Mr. Paul what did you do? If you assented to it, how did you accept it? Did you tell Mr. Paul that you accepted it, or what did you do?

A. I think I told him that I would accept it; that I had got tired, wearied out by being fooled by this Dean and Stinson, and so forth.

71. Q. Did you write any notes of any kind to Mr. Stinson—make any writing yourself?

A. No.

72. Q. You simply told Paul you would take it?

A. I took the proposition as coming from him.

73. Q. As coming from Stinson?

A. Yes, sir.

74. Q. Did you tell Paul to tell Stinson that you took it, or what did you do?

A. Of course I informed the person that brought it to me that I would accept.

75. Q. It was your understanding that the proposition came from Stinson?

(Objected to by defendant's counsel as incompetent, immaterial, and irrelevant.)

A. Certainly it was.

Cross-examination by Mr. SANBORN:

76. X Q. Where did you live at the time you made this filing; what place?

A. At Superior.

77. X Q. How far was that from this claim?

A. I left this city—New York—on the third day of June, 1855.

78. X Q. I don't care about that. Where did you live when you took up this preemption?

A. In Superior, Wisconsin.

79. X Q. How far from this land?

A. Well, it was adjoining the city. The river was between.

80. X Q. How many miles or rods did you have to go to get on your claim?

A. Probably a mile and a half. It might have been a little more.

81. X Q. In what direction was the claim from the city of Superior?

A. I should say it was southeast.

96 82. X Q. How did you go? What means did you use to get to your claim?

A. Sometimes I went a foot and sometimes I had an Indian birch canoe and went clear around the left hand up to the claim, and that I done repeatedly. I could run a birch canoe about as fast as they could a steamboat.

83. X Q. What was your business in Superior before you took up this claim?

A. Well, I was there like all the rest to make some claim, and I bought two or three lots in Superior.

84. X Q. You speculated a little there?

A. Not much.

85. X Q. How did you come to take up this claim? Was it suggested to you?

A. I went to Superior with the purpose of making some investments around Superior. That was the point.

86. X Q. How did you come to go on this particular piece of land?

A. There was a man named Slayton in the State of Maine. That was where I was born, and he had a claim adjoining mine.

87. X Q. Which way from yours?

A. South; and he wanted me to come up there, and he mentioned about this section.

88. X Q. He is the one who suggested it to you?

A. Slayton, yes; he suggested it to me to get on to the claim.

89. X Q. Who went with you, if anybody, when you first went on this claim?

A. I don't think anybody went with me. Yes; it appears to me that Slayton did.

90. X Q. What was your business before you went to Superior?

A. Well, before I went there I was in the tobacco business in Kentucky for some time, and then I came to New York in the year that Fort Sumpter was captured or shortly afterwards.

91. X Q. What other business did you have besides this tobacco business, if any, before you went to Superior?

A. Well, I had made a little money in tobacco, and I bought bonds, Missouri State bonds, something I thought I could sleep on. I don't speculate in stocks. I never bought a stock in my life.

92. X Q. You had no other business except that you have mentioned before you went to Superior?

A. Well, the tobacco business.

93. X Q. Except the tobacco business and the buying of the bonds, you had no other business before you went to Superior?

A. No.

94. X Q. What kind of country was this up there; these lands—was it a timber country?

A. Mostly timbered; yes. Nearly all timber.

95. X Q. Was it timbered from Superior right south of Superior all the way for a good many miles? Was it thickly timbered, heavily timbered?

A. I cannot say it was heavily timbered, but it seemed to be timbered. I was there shortly after the survey of the town by Mr. William Newton.

96. X Q. You mean by "the town" the city?

97 A. Yes, sir. And the claim looked to me as though it was not much account. It was cold, but the clearing-up business let in the sun and changed the appearance of the place very much.

97. X Q. How did you know what piece of land you were on when you went out there?

A. I had a map of Douglas County. I got it in Douglas County and I saw by that.

98. X Q. How did you know that you were on this section or that section when you got out in the woods? How did you determine where you were?

A. Mr. Slayton was with me, I think, and he showed me the tract.

99. X Q. He showed you the tract?

A. Yes, sir.

100. X Q. Was he a surveyor?

A. No, he was a farmer.

101. X Q. How did he know where the tract was?

A. Because it joined his.

102. X Q. How could you tell the boundaries of the tract? What was there to show you where the boundaries of the tract were?

A. As long as we knew it was on the tract we were not so particular about the lines. He knew it adjoined his tract—his quarter section.

103. X Q. He told you it did?

A. Yes, sir; and I found it out. I knew it.

104. X Q. You found out from the map that it did?

A. Yes, sir.

105. X Q. I want to know how you could tell whether you were on this Johanson preemption, except that it was north of his? Were there any other means of knowing where you were, except where he told you and the map?

A. And the map? Well that is enough, is it not?

106. X Q. How big was this tract; how many miles long and wide?

A. It was a singular tract.

107. X Q. Was the tract square?

A. No, I don't think it could be square.

108. X Q. Just describe it?

A. The quarter section is not regular, the southeast quarter, and it lay in such a shape that they made three lots of it, 1, 2, and 3.

109. X Q. How big was the tract? If you went from one side of the tract to the other side of the tract how far was it?

A. Well, I suppose it was the regular size of a quarter section.

110. X Q. How much is that?

A. How much land?

111. X Q. No, how far was it from the north line to the south line of the land?

A. What distance?

112. X Q. Yes, sir.

A. Well, I could not tell you but I should say that it was the regular length of a quarter section.

113. X Q. How wide was it from the east line to the west line?

A. Now, the south part of that quarter section, I reckon, went pretty near the usual length of a quarter section and struck the Left
98 Hand River and then the north part of it ran down the river. It was not very wide on the river.

114. X Q. You don't know how far it was, do you, from the west line to the east line in its widest part?

A. I did not measure it.

115. X Q. You don't know how far it was, do you? You can not tell what distance was?

A. I don't see any necessity for such a question as that?

116. X Q. I want to know whether you can tell or not?

A. I did not measure it.

117. X Q. If you can not tell you can say so.

A. But the surveyor ought to know.

118. X Q. To be sure, but you don't know, do you?

A. I did not measure it.

119. X Q. You don't know, do you?

A. Of course I don't know. I did not measure it.

120. X Q. Do you know what part of the preemption your improvements were on? Do you know which side of the river your improvements were on?

A. The east side.

121. X Q. What part of the claim were your improvements on. Was it the east side or the south side of the claim, or the north side?

A. My claim was on the east side of Left Hand River and my improvements were immediately on the river.

122. X Q. I want to know what part of the claim our improvements were on.

A. That is what I am telling you.

123. X Q. Tell me what part of the claim, whether the east side of the claim or the south side of the claim or the north or the west side of the claim.

A. I was on the west side of the claim, of course, because the pre-emption was on the east side of the river, and the river was the western boundary of the claim.

124. X Q. You did not claim any land west of the river?

A. No; I did not claim any land west of the river.

125. X Q. You did not go on to the land west of the river at all.

A. No; I did not go on to the land west of the river at all.

126. X Q. Don't you know now that Johnson's improvements were west of the river, that the claims to have made were west of the river?

A. They didn't extend across the river there.

127. X Q. The river bounded the claim on the west side?

A. Yes, sir.

128. X Q. You did not go west of the river at all?

A. No.

129. X Q. You read from a paper here in answer to a question put by Mr. Briggs and the reporter took it down. This paper, marked "A" by the reporter, you read from a while ago?

A. Yes, sir.

130. X Q. When did you make this written statement marked "A?"

A. When I was subpœnaed to come here.

99 131. X Q. You made this not long ago, then?

A. I had to review my papers to refresh my mind and to look over and see.

132. X Q. So you made it lately—within a few weeks?

A. Yes, shortly after I got the subpœna. I thought it was the proper way to review it and that paper ought to be received, in my opinion. It is correct and it ought to be received, because I looked over the whole and I made the statement as well as I could.

133. X Q. You had a contest, did you not, over this claim; a regular contest in the Land Office or papers filed for a contest at least?

A. Contest with who, Stinson or Johanson?

134. X Q. Johanson.

A. I never saw him and he was never on the claim while I was there.

135. X Q. I did not ask you that. I asked you whether you had a contest with anybody for him as his attorney or as Stinson's attorney—whether you had a contest to determine whether his preemption was good or whether yours was good?

A. I went to the land office to prove it up and that lawyer, Mr. Hayes and his partner, would not suffer us to prove up and would not assign a reason, either.

136. X Q. If there was a contest pending that contest would have *have* first to be gotten out of the way and discharged before you could prove up?

A. You know the manner of proving up, don't you? They have testimony on improvements, and so forth.

137. X Q. If there was a prior preemption pending that must be gotten out of the way first before you could prove up on the second one?

(Objected to by complainant's counsel as incompetent and immaterial.)

A. Johanson never proved up.

138. X Q. He never got any certificate?

A. He never proved up at all. If he had proved up he would have got a patent.

139. X Q. Are you sure about that?

A. That was my impression, that he would have to prove up in person before he could get a patent.

140. X Q. Could he not get a certificate from the Land Office before he got his patent?

A. His certificate would only say that he had made a claim to it.

141. X Q. Are you sure about that?

A. Yes, sir.

142. X Q. Perfectly sure about it?

A. As perfectly sure as anything can be.

143. X Q. Just as sure as anything you have stated here to-day?

A. That is my understanding.

144. X Q. That is your recollection of this business as you understood it at that time?

A. If he had proved up on that claim he could get a patent on it, and that he never did?

100 145. X Q. Then you understood he had no claim at all to this land?

A. I don't consider he has had any claim at all. He is a perfect fraud, and I was told by the pioneer citizens of Superior that he was an actual fraud, and upon the strength of that I went and made my improvements.

146. X Q. Before you proved up you agreed to sell your claim?

A. Agreed to?

147. X Q. Yes, sir.

A. No such thing; no.

148. X Q. I thought you said here to Mr. Briggs a moment ago that you agreed to sell your claim for $1,500.

A. I never said any such thing.

149. X Q. You never did prove up, did you?

A. I never did prove up.

150. X Q. Didn't you agree to take $1,500 for your claim before you proved up? You agreed to take $1,500 and to sell out your claim to another man before you had proved up?

A. I was kept from proving up.

151. X Q. I want to know whether you did or not?

A. Of course I did, but I was kept from proving up?

152. X Q. I don't care about that.

A. I was kept from proving up by a fraud.

153. X Q. Mr. Dean perpetrated a fraud upon you?

A. Yes, sir; he was a villain—a deceptive villain.

154. X Q. How does it happen that you had an obligation of Stinson's for $1,500 and never got but $500?

A. You see, I held this obligation and it was after the war some time and everything looked sort of dim to me and I did not know what I

would get, and I wrote to Morrison about it before I sent him the obligation, and Morrison wrote me that Stinson would do thus and so, that he wanted to shave the obligation.

155. X Q. He offered to shave it and offered to give you $500?

A. No, that was not the thing. Morrison told me that he would pay me, but he wanted to shave it, something like that, and Morrison said he thought I could get about $1,000. However, $500 was mentioned and George Morrison came down with a check for $500 and I got the $500 and that is all I could get, and I reckon he got the other $500 himself.

156. X Q. You have not explained why you were willing to dispose of a $1,500 claim for $500. Won't you explain why you took $500?

A. I thought I had better have something than nothing.

157. X Q. Didn't you understand that Stinson was responsible or good?

A. I did not know anything about him. It having been so long after the war, I did not know so long after.

101 158. X. Q. What year was it that you got this $500?

A. That I can not tell you exactly. Some years after the war.

159. X Q. Did Morrison come here to New York City?

A. Yes, sir; he came here. I got it myself.

160. X Q. Was it a check or was it a draft?

A. It was a check.

161. X Q. Are you sure it was a check?

A. Certainly it was a check.

162. X Q. Was it drawn on any bank?

A. I think it was a check from him.

163. X Q. From who?

A. From Stinson.

164. X Q. On the Chemical Bank here?

A. Yes, sir.

165. X Q. You are pretty sure of it.

166. X Q. And Morrison gave you the check himself?

A. Yes, sir; Morrison gave me the check himself.

167. X Q. Did you live here then?

A. Yes, sir.

168. X Q. Did he come to your house?

A. He notified me. I think he was at a hotel on Broadway, the Metropolitan.

169. X Q. Now, this paper you say that Alexander Paul had, did he give you this paper?

A. He handed it to me, yes.

170. X Q. Did you keep it?

A. Yes, sir; I kept it until George Morrison——

171. X Q. What were you to do when you got this money?

A. What was I to do with it?

172. X Q. You were to do something on your part. What were you to do when you got the money?

A. I was not to do anything only to keep the money.

173. X Q. Anything else?

A. Nothing else; but I did not get it all.

174. X Q. For what reason did they propose to pay you this money? What were you to do that was beneficial to them, to Paul or Stinson, or whoever it was?

A. It was for the claim that I represented.

175. X Q. Then you sold you claim for that amount. Then you agreed to sell your claim?

A. Yes, I was sort of forced to by the rascality.

176. X Q. You have lived here in New York since 1861?

A. Yes, sir.

177. X Q. Have you ever been back to Superior during all that time?

A. Yes, I went back nearly twenty years after and they were in a devilish fix there, all the banks were. The bonds they had out they had failed to pay the interest on them.

178. X Q. What year was that?

A. I cannot state that exactly. It was about twenty years after. I think it was at least fifteen years.

102 179. X Q. Fifteen years after you came back here?

A. Something near that. I went there and stayed nearly a month at Duluth.

Redirect examination by Mr. BRIGGS:

180. R. D. Q. When you said in answer to one of Mr. Sanborn's questions that you came to New York in the year after Fort Sumpter was captured, that was after you had been up to Superior on this claim, was it not?

A. Oh, yes.

181. R. D. Q. Now, did 'ou mean to say of your own knowledge, Mr. Burbank, that you knew that this Gustaf Johnson or Johanson never proved up on this claim; that is, that he never made his final proof and got a patent?

A. Yes; I know it. I was told that.

182. R. D. Q. You don't know it of your own knowledge?

A. Yes; I know it.

183. R. D. Q. How would Stinson get any title to the land except through a patent which Johnson would get?

A. He could not get a patent until Johanson proved up.

184. R. D. Q. And then do you mean to say that Johanson never did prove up? Did you mean to testify to that?

A. I do not see how he could prove up.

185. R. D. Q. You do not see how he could honestly prove up?

A. Yes.

186. R. D. Q. But you don't know, do you, as a matter of fact, whether he did prove up or not? All you know is that he ought not to have proved up?

A. It was my understanding there that he never proved up.

(Defendant's counsel objects to the understanding of the witness and moves that it be stricken out.)

187. R. D. Q. That is the only basis that you have for saying that he never proved up, simply what you understood? You never examined the records or anything of that sort to find out whether Johanson got a final certificate or patent, did you?

A. If he had proved up on that tract——

188. R. D. Q. I have reference only to what was done.

A. I don't know what in the devil became of it then. I supposed Stinson got a patent on it or he would not have paid me anything for it.

189. R. D. Q. When you said Johanson had not proved up, you meant he had not proved up as long as you were on the claim, didn't you?

A. Of course he could not prove up.

190. R. D. Q. You don't know what was done after you left the claim?

A. No, I don't; for I left the country directly after that.

191. R. D. Q. Let me ask you again. Perhaps the examination that you had on matters before may have refreshed your recollection. Are you able to recall whether Stinson himself ever made any proposition to you in regard to your claim to buy you off, or your quitting, or anything of the sort?

103

A. I don't think that he made a proposition directly to me. It seems to me, too, that he came to the tract when I was on it. I was hoeing potatoes at the time and there was some conversation between us, and whether or not he proposed then to pay me something to leave, I can not say for sure. There may have been something said, and I think he came up with that view. His father was with him, an old gentleman who died shortly afterwards.

Mr. BRIGGS. The Government offers in evidence the paper marked "Exhibit A F. D. C." the statement made by Mr. Burbank, on which the counsel for the defense has cross-examined him.

(Objected to by defendant's counsel as incompetent, irrelevant, and immaterial.)

192. R. D. Q. In this statement which you wrote out you say at the end: "And the said James Stinson came to Superior on the 20th of September, 1858, and proposed to buy my claim and I sold out to him."

(Objected to by defendant's counsel as incompetent, immaterial, and irrelevant.)

A. Yes, sir.

193. R. D. Q. Was it Stinson himself who made this proposition, or was it made through Paul or a third party?

A. Yes; a third party.

194. R. D. Q. This statement to which we have referred is a true and correct statement, is it not?

(Objected to by defendant's counsel as incompetent, irrelevant, and immaterial.)

A. It is a correct statement as near as I could make it.

Recross-examination by Mr. SANBORN:

195. R. X Q. What kind of a house did you build on this claim?

A. A log house.

196. R. X Q. How large; how many feet?

A. Well, I would suppose almost as large as this room. I will say it was 30 feet long and 15 feet wide.

197. R. X Q. How many rooms?

A. There wasn't many rooms. There was apartments where the cooking was done and where the sleeping was done.

198. R. X Q. You had one large room there?

A. I think there was a little partition or something like that, because there was a woman there, a hired woman, Mr. Weaver's wife.

199. What year did you hire him?

A. I think in 1856.

104 200. R. X Q. The next year?

A. Yes, sir.

201. R. X Q. When did you complete this house or finish it?

A. It must have been before the middle of July.

202. R. X Q. Did you have a door?

A. Yes; I had a door and chimney.

203. R. X Q. Windows?

A. Yes; and chickens and a cow.

204. R. X Q. Did you have glass sash in the windows?

A. I think there was a sash.

205. R. X Q. And a door was there?

A. Oh, yes.

206. R. X Q. Where did you get the door and sash, in Superior?

A. No; it was a plain door?

207. R. X Q. Who made the door?

A. I think I made it myself?

208. R. X Q. Who made the windows?

A. Well, I think there was a sash in it.

209. R. X Q. Where did you get it?

A. I think that came from Chicago, at the time I had the cow brought from Chicago.

210. R. X Q. What year?

A. I think it was in the latter part of 1855.

211. R. X Q. Did you live up there?

A. Yes; I lived up there and worked with this man and cleared up 6 or 7 acres.

212. R. X Q. How long did you live there?

A. Almost three years.

213. R. X. Q. Did you live there all that winter, the winter of 1855 and 1856?

A. Not all the time. I had an office down in town.

214. R. X Q. What business did you do there?

A. I did not do much of anything.

(Objected to by complainant's counsel as having been gone into thoroughly before.)

215. R. X Q. You had a house in town, too, did you?

A. Yes, sir.

216. R. X Q. All that time?

A. Yes, sir.

217. R. X Q. What were you doing with two houses?

A. Renting them.

218. R. X Q. You rented a house in Superior?

A. No.

219. R. X Q. You rented this one out in the woods?

A. No; I did not rent that.

220. R. X Q. Which one did you rent?

A. The one in the city.

221. R. X Q. You had an office in Superior?
A. Yes, sir.
222. R. X Q. Where was that, upon what street?
A. On Second street.
223. R. X Q. What did you do in your office?
(Objected to by complainant's counsel as incompetent, immaterial, and irrelevant.)
A. I sat down and read the papers and sometimes I read Blackstone, but I never got much out of that.
105 224. R. X Q. Did you live there at the office, sleep there and have a bed there?
(Same objection by complainant's counsel.)
A. Oh, yes.
225. R. X Q. You made that your home?
A. Yes, sir.
226. R. X Q. At your office?
A. No; I made it up there on the claim.
227. R. X Q. What were you doing with a bed down in the city of Superior?
A. Because I wanted it when I came down once in a while to see what was going on.
228. R. X Q. How much of the time during these three years did you sleep out in the woods?
A. Well, probably three-fourths of the time.
229. R. X Q. Who was with you, anybody?
(Objected to by complainant's counsel as already having been inquired into.)
A. Yes, sir.
230. R. X Q. Who?
A. This Mr. Weaver. He kept house there.
231. R. X Q. Who was with you the first year before Weaver came there?
A. I was alone then.
232. R. X Q. How long did Weaver stay there?
A. I think it was going on two years.
233. R. X Q. You rented the place to him?
A. No; he was to have half that he raised.
234. R. X Q. During these three years what business did you do, if anything, besides what time you spent on this claim? Did you buy and sell some land?
A. I did sell some.
235. R. X Q. Anything else, any other business?
A. I never had any business up there except farming business. I did not go there as a land speculator.
236. R. X Q. What did you do for a living? You had some funds when you went there?
A. I had bought some bonds that brought me in an income.

Redirect examination by Mr. BRIGGS:

237. R. D. Q. Of your own knowledge you do not know who did get a patent to this land, do you?
A. No; I don't.

238. R. D. Q. Did anyone claim to be the owner of this land, or to have a patent, or certificate to it at any time while you were living upon it?

A. No.

239. R. D. Q. No claim of ownership was ever made by anyone while you lived upon it?

A. No.

240. R. D. Q. Did you know or understand that James Stinson
106 had a deed to this land or owned it in any way in 1858 when you made this deal with him?

A. Of course not. He did not. How could he get a deed to land that he did not own?

241. R. D. Q. Did he ever claim to you, or anyone acting for him, that he owned the land?

A. No; by no means.

EXHIBIT A. F. D. C.—*Statement of March 31, 1896.*

MARCH 31, 1896.

In relation to a preemption land claim I made in the summer of 1855 to the southeast quarter of section one (1), in township forty-eight (48), and range fourteen (14) west, and known as lots 1, 2, & 3, fronting on left hand river in Douglas County and State of Wisconsin on about the time or shortly after filing my declaration on said claim I learned that a prior claim to mine had been made to said quarter section by one of James Stinson's hireling preemptors by the name of Gustof Johanson, a Swede. I then went all over the said claims to see if the said Johanson had made any improvements on said claim, and I found none that could be so called, and having been assured by the pioneer c'tizens of Superior that the said Johanson's claim on the said described quarter section was a fraud upon the General Government and a shameful violation of the preemption law. On or about the 1st day of July, 1855, I went in person upon said claim and made it my place of residence and commenced valuable improvements by building, clearing, and cultivating crops thereon, and so continued up to September 20th, 1858. I had done everything necessary in good faith under the preemption act to enable me to prove up on said claim and during my occupancy upon said claim of three years I had made frequent call upon a Mr. Dean, then land agent at Superior, to allow me to prove up on said claim and was restrained each time by said land agent to do so without assigning any cause for so doing. It was my solemn belief and the expressed opinion of the pioneer citizens of Superior that said land agent at Superior had been bribed by the said James Stinson to keep me from proving up on said claim. At length a feeling of despondency and disgust came over me in view of my unfair treatment, and the said James Stinson came to Superior on the 20th day of September, in 1858, and proposed to buy my claim and I sold out to him.

107 *Certificate of commissioner.*

Circuit court of the United States, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, a commissioner of the circuit court of the United States for the southern district of New York, do hereby certify that in pursuance of the stipulation hereto attached, signed by the solicitors for the respective parties, I took the deposition of Ambrose B. Burbank, at my office in the post-office building in the city of New York, county of New York and State of New York, on the 31st day of March, A. D. 1896, beginning at ten o'clock in the forenoon and ending at about two o'clock in the afternoon of said day; that such testimony was taken in the suit of the United States of America, complainant, vs. James Stinson and Henry J. Stinson, defendants, pending in the circuit court of the United States for the western district of Wisconsin, and that H. E. Briggs, esq., for the complainant, and A. L. Sanborn, esq., for the defendants, in said suit appeared before me at the taking of said deposition.

I further certify that the reason for taking said deposition was that the said witness lives at a greater distance than 100 miles from the place of trial of said suit named herein. That I am not now and never have been of counsel or attorney to either of the parties to the said suit, nor interested in the event of the cause; that said witness was before giving any testimony by me duly and publicly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth relative to said cause, and was by me carefully examined; that the testimony by consent of the solicitors for the respective parties was taken down in shorthand by Frank D. Curtis, a disinterested person, in my presence, pursuant to the stipulation of the parties appearing in the caption to said deposition, and that by said stipulation the reading over of said testimony to the witness and his signature to the same were waived; that I have sealed up the said deposition and directed the same to said circuit court of the United States for the western district of Wisconsin at the city of Madison, in said district.

108 In testimony whereof I have hereunto set my hand and affixed my official seal, this 11th day of April, A. D. 1896.

[L. S.] JOHN A. SHIELDS,
Commissioner of the Circuit Court of the United States for the Southern District of New York.

Marshal's fees subpœna, $0.62.
Fees for taking deposition, $14.20.

Stipulation filed May 13, 1897.

Afterwards, to wit, May 13, 1897, filed stipulation extending time for taking testimony, as follows:

United States of America, circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES
vs.
JAMES STINSON & HENRY STINSON.

It is stipulated that the time for the complainant to take its testimony in support of the bill may be extended until the 15th day of July, 1897.

H. E. BRIGGS &
JAS. G. FLANDERS,
Complainant's Solicitors.
SPOONER, SANBORN & SPOONER,
Defendants' Solicitors.

(Endorsed:) Chan. 279 B. circuit court of the United States, west. District of Wisconsin. United States vs. James Stinson & Henry Stinson. Stipulation extending time for taking testimony. Filed May 13, 1897. F. W. Oakley, clk. By F. D. Reed, deputy.

Afterwards, to wit, July 1, 1897, filed stipulation extending time for taking testimony to September 15, 1897, as follows:

109 Circuit court of the United States, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY STINSON, DEFENDANTS.

It is hereby stipulated that the time for taking testimony on the part of the complainants in the above-entitled action be, and the same hereby is, extended to the 15th day of September, A. D. 1897.

H. E. BRIGGS &
JAS. G. FLANDERS,
Solicitors for Complainants.
SPOONER, SANBORN & SPOONER,
Solicitors for Defendants.

(Endorsed:) Chan. 279 B. circuit court west. dist. of Wis. U. S. vs. James Stinson. Stipulation extending time for taking testimony to Sept. 15, '97. Filed July 1, 1897. F. W. Oakley, clerk.

United States circuit court, western district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON ET AL.

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110 *Testimony of Israel Johnson.*

In the United States circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON ET AL., DEFENDANTS.

Be it remembered that pursuant to an order of the court above named, duly entered in the above entitled action on the 4th day of February, A. D. 1896, and to a stipulation and notice for taking testimony herein, there appeared before me, Charles L. Spencer, United States commissioner for the district of Minnesota, at my office at room 3, in the post-office building in the city of Saint Paul, Minnesota, at 10 o'clock a. m., on Wednesday, the 9th day of March, A. D. 1898.

James G. Flanders, esq., special assistant to the United States attorney, for the prosecution of said action, and

R. M. Bashford, esq., and A. L. Sanborn, esq., attorneys for said defendants.

At which time and place the taking of the testimony hereinafter reduced to writing proceeded before me, as follows:

ISRAEL JOHNSON, a witness produced on behalf of the United States, is sworn, is examined, and testifies as follows:

Examined by Mr. FLANDERS:

Q. Where do you live, Mr. Johnson?

A. In Chisago County.

Q. And how far from the city of St. Paul?

A. About 43 miles, I suppose.

Q. You have traveled that distance to come here as a witness in this case, have you not?

A. Yes; on the railroad; and I had a mile to travel before I got to the railroad.

Q. What countryman are you, Mr. Johnson, what nationality?
A. I am a Swede.
Q. When did you come to the United States?
A. 1854.
Q. How old are you now?
A. 65 years.
Q. When you came to the United States where did you go?
A. I came to Chisago County.
111 Q. Chisago County in the State of Minnesota?
A. Yes, sir.
Q. Were you a married man at that time?
A. No; a single man when I came here.
Q. Did you have anything to do with preempting some land in Douglas County, Wisconsin?
A. Yes.
Q. Who first spoke to you about it?
A. Pretty hard telling; I guess Mr. Stinson and John Johnson.
Q. Which Stinson?
A. I don't know. I don't know the difference between them or the name of them.
Q. Well, where was it that they spoke to you about it?
A. On the road between where I lived and Taylors Falls.
Q. Where was Stinson and John Johnson?
A. On the road.
Q. As to whether they were in a buggy or wagon, or something of that kind?
A. In a wagon, I think.
Q. Were they together?
A. Yes; they were together.
Q. What was said to you about this at that time?
A. What was said, that is so long ago I can't tell you; they offered me so much to preempt land for them; that's all I can recollect.
Q. Well, do you remember what their offer was—what they said about it?
(Objected to as incompetent and immaterial, as the witness does not identify the parties.)
By the COMMISSIONER: The objections are made, and not passed upon by the commissioner.
Q. Well, tell us about it.
A. If I would go up there and preempt land they pay me I think $30.00 a month, and some for my claims besides.
Q. What did you say, about?
(Same objection as before.)
A. I say I should go.
Q. Did you go?
A. I did go.
Q. Did anybody go with you?
A. Yes, sir.
Q. Who were they?
A. Some of them is dead. Wallmark and his brother, Swen Peterson, and some other one, Gustav Vieborg and August Johnson; another fellow, his name is Westlung; that's all I can recollect.

Q. Did you all go together?
A. We took one claim apiece.
Q. But did you go over to Douglas County together, or did you go separately?
A. We went up together, and came down together.
113 Q. How many of you?
A. I told you I can't recollect any more.
Q. Now when you got to Douglas County what did you do there about the claim?
A. I didn't do anything with it.
Q. As to whether you took up a claim?
A. I built a little shanty there.
Q. What claim did you take?
A. I don't know; I couldn't read English, and he put my name to what he had a mind to.
Q. Who showed you what claim to take up?
(Objected to by Mr. Bashford, as incompetent and immaterial.)
A. John Johnson.
(It is stipulated by and between the attorneys for the respective parties that any objection not going to the form of the question may be made by either counsel without noting it at the time of the examination, with the same force and effect as if it had been then noted.)
Q. How did you know where to go when you went out to build your shanty?
A. We had a fellow, John Johnson, to lead us; was along with us to show us the land.
Q. Who told you to go with John Johnson?
(Objected to by Mr. Sanborn, as leading.)
A. He said we should follow him when we talked with Stinson and him on the road.
Q. What did Stinson say, on the road, to Johnson? What is the fact as to whether you could speak English; could you speak English then?
A. No.
Q. Did Stinson speak Norwegian or Swedish?
A. No; I suppose not.
Q. Johnson was Swede and he spoke English?
A. Yes.
Q. And Johnson spoke Swedish, did he?
A. Yes, sir.
Q. Now, what was said there when they were in the buggy about your following Johnson?
A. That's what I told you before.
Q. Tell it again, please.
A. I can't recollect every word.
Q. Not every word, but what did he say about your doing what Johnson told you to do?
A. He told me what I told you—to go up there and preempt land—if I go I could get so much every month and so much for my claim.
Q. You don't quite understand it. What was said about your following Johnson?
A. I was to follow Johnson; I had nothing else to do with it.

Q. When you got up to Douglas County did you follow Johnson?
A. I did.
Q. And what did Johnson do?
A. He showed us the claim where we should work.
114 Q. To whom did he show these claims?
A. Those along in my company.
Q. Now, what did you do on the claim?
A. I cleared a little piece and built a little shanty.
Q. Anything more?
A. No.
Q. Did you live on the claim at all?
A. Yes; a single night.
Q. And then what did you do?
A. Went to another place and worked there. I don't recollect how many of us, but we worked on one claim and moved on to another one and helped each other to put up the houses.
Q. Now, then, what after that?
A. After that I went home; right back.
Q. Did you work on the streets in Superior at all?
A. No.
Q. How long were you up there altogether?
A. Well, pretty hard telling; I guess it was pretty nearly a month; we went down to Hudson; we stayed at Taylors Falls until we come back home again. I think it took us a month until we got back home on the same trip.
Q. How long did it take you to go over home from there?
A. I think four days to Taylors Falls.
Q. And the same to come back?
A. Yes, sir.
Q. Well, what did you do next about this claim; did you make any papers out?
A. Yes; they made out papers.
Q. Where were the paper' made out?
A. Hudson.
Q. Did you go to Hudson?
A. Yes, sir.
Q. How long after you came back from Douglas County?
A. Not long, because we stayed home one day and went over there the next day.
Q. Who went down to Hudson?
A. The whole company.
Q. The same that you have told about?
A. Yes, sir.
Q. And when you got down to Hudson who did you see there?
A. I couldn't tell you, because I don't know them.
Q. As to whether you saw Stinson?
A. I believe he must be there, but I can't tell you.
Q. And John Johnson?
A. John Johnson was with us the whole time.
Q. Now, you say they made out papers for you there?
A. Yes.

Q. Now, who made out those papers?
A. You can't find that out by me; I don't know.
Q. Did you sign any papers there?
A. We was in office like here, but who did it I don't know.
Q. Did you sign any papers there?
A. Yes, sir.
Q. As to whether any of the others signed papers there?
A. I guess so.
115 Q. Now, did you pay any money there?
A. No.
Q. Who did pay the money to the land office?
A. Somebody down there; I suppose it was Stinson that paid the money, or Johnson paid the money, I couldn't tell, because it is so long ago I can't recollect. I got some money I know, that's all.
Q. Do you know what papers you signed?
A. I signed a form of a deed, but I told you I could not read English, and don't know what I did sign.
Q. Who was the deed to?
A. That fellow that hired me to go up there.
Q. Whom did the deed run to?
A. I could not read a word of English.
Q. Whom did you understand it ran to; whom were you told it ran to?
A. To Stinson.
Q. You understood that at the time?
A. Yes, sir.
Q. Do you remember who told you that?
A. No; I don't, but Johnson was our man, and he told us what to do.
Q. Was this the first year that you came to Minnesota?
A. No; I came in the fall, in October; and this was the year after, I guess, in April or May.
Q. And you came to Minnesota in 1854?
A. Yes, sir.
Q. Did you take up any other land at that time?
A. No; I bought of the United States my little farm what I have lived on since.
Q. That was in Minnesota?
A. Yes; in Chisago County.
Q. Mr. Johnson, is there any way that you can tell the description of the land that you took up at Hudson at that time?
A. No; I guess not.
Q. Have you any papers that would show?
A. No.
Q. Mr. Johnson, did you hear what Stinson's first name was at any time during that summer?
A. I think I certainly heard it, but I am not certain.
Q. Was it James Stinson?
A. I think it was, but I am not certain.

Mr. FLANDERS. It is conceded by counsel for defendant that the legal description of the land entered by the witness was the NE. ¼ of section 5, township 48 north, of range 13 west, in Douglas County, Wisconsin, June 23, 1855.

Q. These men that went up to Douglas County with you, what did they do on their claims?

A. The same as I did.

116 Cross-examination by Mr. BASHFORD:

Q. Had you ever seen these men that you call Stinson and Johnson before you met them on the road that day when you were going to Taylor's Falls?

A. Yes, I believe so; I think I see John Johnson when I first came here.

Q. John Johnson lived in Chisago County, and he was a countryman of yours?

A. Yes.

Q. Where is he now?

A. Dead.

Q. How long has he been dead?

A. I couldn't tell you.

Q. A long time?

A. Yes.

Q. Twenty years?

A. No; I don't think it 20 years, but I guess you will find out better than me; I don't recollect.

Q. Did you ever see John Johnson after that time when you went up there?

A. Yes; I did.

Q. Had you ever seen James Stinson—this man that you call Stinson—before you met him on the road that day?

A. No.

Q. Did you ever see him afterwards?

A. When I was in Hudson I suppose I did, but I don't know; that was when I saw him on the road, and he told me that it was that man; and that is all I know about it; Johnson told me that it was that man.

Q. This party of men that you have mentioned were on the way to Taylor's Falls?

A. I was alone when I met that man; nobody was with me; I was on my way to Taylor's Falls.

Q. And all you know about this man is what Johnson told you at that time?

A. Yes.

Q. You didn't talk with Stinson?

A. I couldn't.

Q. And Stinson didn't talk with you?

A. No.

Q. And you never talked with Stinson in your life?

A. No.

Q. And he never talked with you?

A. Not that I know of.

Q. When you got down to Hudson some papers were made out in the office where you were and those papers you signed?

A. Yes.

Q. Whatever they were?

A. Yes.

Q. The party that went with you from Taylor's Falls to Superior were Otto Wallmark, Gustav Johnson, or Vieborg, Andreas Wallmark, and Ole Westerlung; was anybody else along with you from Taylor's Falls to Superior?

A. I can't recollect any more; Ole Westerlung was along I know; I recollect him.

Q. There was another Johnson, was there not, with you at Superior or at Hudson?

A. No; I can't recollect any other John Johnson.

117 Q. Do you know any other John Johnson called John Johnson the second sometimes?

A. Not in our company when I went.

Q. Your recollection is not very clear about this, is it; these transactions which happened so long ago?

A. No; certainly not.

Q. And you can't be very certain what was said and done so long ago, can you?

A. Well, what was said I can't recollect, but what I done I can recollect it.

Q. What you did you recollect?

A. Yes.

Q. And you have told us all you did so far as you can recollect?

A. Yes; what I can think of.

Q. And all that was said so far as you can recollect?

A. Yes.

Redirect examination by Mr. FLANDERS:

Q. Mr. Johnson, you said that you were to get so much a month; was that paid to you?

A. Certainly.

Q. By whom—who paid it?

A. Paid to me in Hudson. I suppose that it came from the same man that the other did; I couldn't understand any English.

Q. It was paid to you at Hudson at the time you signed these papers?

A. Yes, sir.

Q. And you didn't pay for the land?

A. No.

Q. Now, Mr. Johnson, when you met John Johnson and Stinson on the road, Johnson talked to you in Swedish?

A. Yes, sir.

Q. Did Johnson and Stinson talk together?

A. Yes, sir.

Q. And after they had talked together, did Johnson talk to you?

A. Yes.

Recross-examination by Mr. BASHFORD:

Q. How much money did you get down at Hudson, do you recollect?

A. No; I don't. I think I got $30.00 a month and so much for the preemption, but I don't know how much there was—I can't tell.

Q. Well, you got more than $30.00 down there, didn't you?

A. Yes.

Q. Did you get as much as $250.00, do you think.

A. No.

Q. Is it not a fact that this man John Johnson, who is a neighbor of yours, advised you to go up there and preempt this land in the first place?

A. Nobody else have talked to me about that before I talked to them on the road.

Q. Don't you know that the Swedish consul at Chicago had
118 advised the Wallmarks to go up to West Superior and preempt some land there? Didn't they tell you so? Didn't Wallmark ask you to go up there with him?

A. No; Wallmark did not ask me to go; Johnson asked me.

Q. Didn't Johnson tell you that he had preempted some land there the year before?

A. He didn't tell me that, but I found it out afterwards.

Q. Then the only man that you ever talked with about going there to preempt land was this man John Johnson?

A. Yes, sir.

Q. Mr. Johnson, after you had been up to Superior this whole matter went out of your mind and you never thought of it or talked of it again for thirty-five years?

A. I never thought a word of it until I got called in your court by you fellows, then I think about it.

Q. A man by the name of Streeter came up there and got some affidavits, didn't he, in Chisago County, ten years ago?

A. Yes; several of thim. I don't know their names; I don't know how many.

Q. That was all within the last ten years?

A. Yes, sir.

Q. Are you sure that this man John Johnson, whom you spoke of, was up at Superior in 1855 when you were there?

A. I am.

(The reading of the testimony to the witness and his signature is waived.)

LORENS JOHNSON, a witness produced on behalf of the United States, is sworn, is examined, and testifies as follows:

Examined by Mr. FLANDERS:

Q. Where do you live?

A. In Centre City, Chisago County, Minnesota.

Q. And you have come from there here as a witness, have you?

A. Yes.

Q. And how far is that? How many miles?

A. About 43 miles.

Q. How old are you?

A. Seventy-seven.

Q. You are a Swede, are you not?

A. Yes.

Q. How long have you been in this country?

A. Forty-five years.

Q. What year did you come here?

A. 1853.

Q. Where did you go? Where did you settle? Where did you live when you first came here?

A. Centre City.

Q. Did you do anything about taking up any land in Douglas County, Wisconsin?

A. Yes, sir.

119 Q. Who first spoke to you about it?

A. John Johnson, I guess.

Q. Where?

A. At Taylor's Falls.

Q. Was anybody with him?

John A. Larson, sworn as Swede interpreter.

Q. Was anybody with John Johnson when he spoke to you about taking up this land?

A. No.

Q. What did John Johnson say?

A. He didn't say nothing, except he wanted me to go and work by the mouth—$30.00 a months wages.

Q. Where did he want you to work?

A. Up at Superior.

Q. For how much a month did you say?

A. $30.00 a month.

Q. What did he say about taking up the land?

A. He didn't say anything particular about that, but we should take one hundred and sixty acres each.

Q. Whom do you mean by he?

A. Stinson.

Q. What Stinson?

A. James Stinson.

Q. Did you see James Stinson?

A. Yes. He was there.

Q. Where?

A. In Superior.

Q. And what did Stinson say to you?

A. (By interpreter.—He says he didn't understand what Stinson says. It was only Johnson that talked to him about it.)

Q. Were Stinson and Johnson together?

A. Johnson was hired just like me from Stinson.

Q. How do you know that?

A. He said so himself.

Q. Who said so? Do you know that Johnson was hired by Stinson?

A. He hired him just the same as the rest.

Q. How do you know that?

A. I was at Taylor's Falls when he hired him.

Q. Were Stinson and Johnson together when these men were hired at Taylor's Falls?

A. Yes, sir.

Q. Now, you didn't speak English then, did you?

A. No.

Q. Did Stinson speak to Johnson?

A. Yes.

Q. And then did Johnson speak to you in Swedish?
A. Yes.
Q. When Johnson spoke to you in Swedish he hired you at $30.00 a month?
By Mr. SANBORN. Objected to as leading.
A. Yes.
Q. Now, who went over to Superior with you?
A. It was an Indian that went with me.
120 Q. In Taylor's Falls, when Stinson and Johnson were together, what were you told about following Johnson or doing what he told you to do?
(Objected to as leading.)
Q. You remember the time in Tayl'r's Falls when you were hired?
A. I think it was in '54.
Q. Now, when you were there in Taylor's Falls was anything said to you about doing what John Johnson told you to do?
A. I did not know what they were going to do until I was hired to go to Superior.
Q. Who was to tell you what to do?
A. Did not know that before we got there.
Q. When you got there did you find it out?
A. Yes.
Q. What did you find out then?
A. Went to work to lay out the streets.
Q. Who told you where to go on the land?
A. John Johnson.
Q. What did you do on the land?
A. We built cabins—shanties.
Q. How much land did you settle on?
A. One hundred and sixty acres.
Q. What kind of a cabin was it?
A. It was made of chunks, six feet long. It was just a little shanty.
Q. Any roof on it?
A. They put on brush for roof.
Q. Did you live in that shanty?
A. No.
Q. How long were you building it?
A. About two or three hours.
Q. Now, these other men that went over there with you, did they have claims like yours?
A. Yes; same thing.
Q. How many acres did they lay claim to?
A. I don't know anything about that, but I suppose they took one hundred and sixty.
Q. Did they use their shanties?
A. We helped each other to build shanties—shanties all alike. We were not particular about it.
Q. How long did you stay in Superior?
A. Two months.
Q. Were you paid for your time over there?
A. I was not paid until I came to Taylor's Falls.

Q. Were you paid when you came to Taylor's Falls?
A. Yes.
Q. How much?
A. Thirty dollars a month, and was for two months.
Q. What did you do in Superior when you were there?
A. They built a pile driver on the lake there and then cleared the streets.
Q. Did you see Stinson over there?
A. Yes; he was there all the time. He went with us down to Superior.
121 Q. Went with you from Taylor's Falls to Superior?
A. No.
Q. What do you mean—that Stinson went to Superior with you?
A. He said when he left us that we should meet him in Hudson ten days after.
Q. Where did you leave Stinson?
A. In Taylor's Falls.
Q. Then did Stinson come down from Superior to Taylor's Falls with you?
A. Yes; we were all together.
Q. John Johnson too?
A. Yes.
Q. Who told you to meet Stinson in Hudson ten days afterwards?
A. He said that himself.
Q. Well, now, where did you go from Taylor's Falls?
A. I went to Chisago Lake.
Q. Did you go to Hudson?
A. Yes.
Q. In about ten days?
A. Yes; just ten days.
Q. Who went down to Hudson with you?
A. All of them that was up there.
Q. Who were they?
A. Some of them dead that went up with us at the time.
Q. Yes; I know; but tell the names.
A. John Johnson, Peter Norell, Peter Magnus, one by the name of Alstrom. They are dead, so I forget the names of them.
Q. How many were there altogether?
A. I think there was just about fourteen.
Q. Now, when you got down to Hudson did you see Stinson there?
A. Yes; he met us there.
Q. Now, what did you do at Hudson?
A. I was at the land office and signed the deeds.
Q. Who was there with you?
A. Stinson.
Q. Now, did you get any money there?
A. Yes; I got ten dollars when I went to Hudson.
Q. Who paid that money?
A. Stinson.
Q. Stinson himself?
A. Yes.
Q. Were you all together when it was paid?

A. I can't recollect.
Q. Did you see it paid to some of them?
A. I can't recollect that, but I know that he paid me.
Q. Did you see him pay anybody else?
A. No.
Q. Who made out the papers?
A. I don't know.
Q. Did you pay any money to the land office?
A. No.
Q. Who paid the money to the land office for you?
A. I don't know; I did not see anybody.
Q. Whom did you understand paid the money to the land office?
A. I don't know.

122 Q. Do you remember the description of the land which you entered?

A. No.
Q. Well, you did not enter any land there except once, did you?
A. No.

(It is conceded by the counsel for the defendants that the description of the land entered by or in the name of Lorens Johnson was the northwest quarter (NW. ¼) of section 33, township 49 north, range 14 west, Douglas County, Wisconsin.)

Q. In Superior, were these men that went down there with you working on the streets and on the pile driver at the time you were?
A. All of them. They had their own camp and lived in it, all together.
Q. How long did you stay on your claim up there?
A. I was there when I built the camp and it took me about a couple hours.
Q. The others the same way?
A. Yes.
Q. Did he pay you at Hudson the thirty dollars a month?
A. He paid me at Taylor's Falls before we went to Hudson.
Q. Stinson?
A. Stinson himself paid me.
Q. Was this John Johnson who filed a claim a married man?
A. No.
Q. Was there a John Johnson who filed a claim a married man?
A. There was a man by the name of Hellene (Helleen) that they may have called Johnson, but I could not say for certain. This man Helleen was a married man.
Q. Where was your family living?
A. Chisago Lake. Ogren was also a married man. His family lived at the same place that I lived, Chisago Lake.
Q. Why did you go out on that claim near Superior? Who told you to go out?
A. Mr. Stinson.
Q. Did Stinson go out to the land with you?
A. Yes.
Q. Anybody else?
A. The whole crew.

Cross-examination by Mr. BASHFORD:

Q. You had known this man John Johnson for a year before you went up to Superior?

A. I knew him from Sweden.

Q. Did he go up there to take up land?

A. Yes.

Q. You had a talk with John Johnson about going up to Douglas County to get land before you went to Taylor's Falls?

A. No; he didn't say anything about that before we get to Superior

123 Q. You went up to Superior to work on the street and on the pile driver?

A. Yes, sir.

Q. You think you saw James Stinson there at Superior, do you?

A. When he came up there he came up to me.

Q. You had never seen Stinson before that, except at Taylor's Falls, had you?

A. Yes.

Q. Had you seen Stinson at Taylor's Falls before you went to Superior?

A. I hired to him at Taylor's Falls.

Q. It was Johnson that talked with you at Taylor's Falls, wasn't it?

A. Yes. Johnson he was there.

Q. After you got up to Superior you went out and took up some land?

A. Yes; we worked on the street before we went out and took the land.

Q. Who first spoke to you about taking the land?

A. Stinson. He came in the morning and told us to go to the woods.

Q. You could not understand what Stinson said to you, could you?

A. No. Johnson said so.

Q. Johnson told you so; and it was Johnson that came and told you to go to the woods that morning?

A. Yes.

Q. And it was Johnson that went out with you to the woods?

A. Yes.

Q. Was that the only one who talked with you about taking land—this John Johnson?

A. No.

Q. Who else talked with you about taking land?

A. Nobody.

Q. So you went out with Johnson and selected a tract of land and put up a shanty on it?

A. Yes; and Johnson and Stinson was there, too.

Q. Did Stinson go with you to the land?

A. Yes.

Q. And you put up a shanty on the land?

A. Yes.

Q. And you stayed there in the shanty one night?

A. No.

Q. Didn't you men stay up there in your shanties over night?

A. No; they had their own camp that they were living in.

Q. Didn't you take turns sleeping in these shanties—sometimes in your shanty and sometimes in another shanty?

A. No.
Q. Your memory is not very clear upon this subject, is it?
A. I don't recollect all, but I recollect so much that I never sleep in the shanty one night.
Q. This was forty-five years ago?
A. Forty-four.
Q. And you have not been around there since?
A. No.
Q. You made an affidavit before P. Shaleen, clerk of the district court of Chisago County, in December, 1887, did you not?
A. Not that I recollect.
124 Q. Did you make such an affidavit when C. G. Johnson was present?
A. I don't recollect that.
Q. Well, you hadn't talked about this matter with anybody for over forty years after you went up to Superior, had you?
A. There has been so many that has had this matter up that I can't recollect it.
Q. Well, this matter was not talked about for nearly forty years after you went up there, was it?
A. No.
Q. When was this matter first talked about within late years?
A. A lawyer, probably about eight years ago, came up from Superior. I think about eight years ago. His name was Streeter.
Q. Prior to that time, before Streeter came there, you had not thought of this matter or talked about it since you were up there?
A. No; I don't know anything about it.
Q. You have talked about it since Streeter was there?
A. Yes.
Q. But you had not talked about it before Streeter came there?
A. Not that I recollect.
Q. Did you say this man Stinson went with you from Superior down to Taylor's Falls when you came away from Superior?
A. The whole way. He carried satchels and came every step back to Taylor's Falls.
Q. When you got to Taylor's Falls Stinson paid you off?
A. Yes.
Q. Before Johnson told you to go over to Hudson and prove up your claim?
A. Yes.
Q. And Johnson went over at that time to prove up his claim?
A. Yes; he did that just the same as the rest, I suppose.
Q. John Johnson went with you to Hudson to prove up a claim when you proved up yours?
A. Yes. We were all there.
Q. Now, you never talked with Stinson at all?
A. No.
Q. Your talk was with John Johnson all the time?
A. Yes.
Q. When did John Johnson die?
A. Right after. Two or three years after. He drowned in the river. After this trip to Superior.

Q. Andrew Swenson is dead?
A. Yes, sir.
Q. John Johnson is dead?
A. Yes, sir.
Q. Sven Larson is dead also?
A. Yes, sir.
Q. When did he die?
A. That is a long time ago. I can't recollect how long it is.
Q. Is Peter Magnus dead?
A. He lives at Red Wing, I think.
Q. Peter Swenson is dead? Johanas Helleen is dead? Matthias and Swen Larson are dead? Ostrom dead?
A. Yes, sir. There is another one dead, Swen Magnuson.
125 Q. Your deposition was taken in an action pending in the United States circuit court for the western district of Wisconsin in an action brought by J. E. Gagnellius and John Ogren against James Stinson, in July, 1893, was it not, in Chisago County?
A. I don't know anything about it.
Q. You gave your testimony in a case, didn't you, at Chisago City on the 19th day of July, 1893?
A. I knew that Ogren was going to sue and talked about it, but I do not recollect it.
Q. Was your deposition taken up there in July, in 1893?
A. No.
Q. Have you no recollection about that at all?
A. No.
Q. Don't you recollect that the officer who took your deposition had a typewriting machine there and took down what you said there at the time?
A. That was in Chisago City?
Q. Yes; and you gave your testimony there. At that time did you testify, "Yes; I took up land and built a shanty on it?"
A. Yes; I say so now.
Q. And did you then testify, "I can recollect that we each worked and slept in each other's shanties?"
A. I don't think I did, but I don't recollect.
Q. Did you then testify at the same time and place, "I can recollect that I slept in my shanty one night, anyway?"
A. No, sir. I didn't sleep in any shanty. Not a night.
Q. Did you make this answer at that time, "Can recollect that I slept in my shanty one night, particularly; it was over forty years ago?"
A. That is pretty hard to recollect, so long as that.
Q. Did you testify at that time, "I can recollect that I cleared a piece of land and built a shanty?"
A. Yes; I cut off some brush around there.
Q. Did you then testify, "There was an opening for a door, but I can't recollect whether it was made to be locked or unlocked?"
A. We did not make any doors, but there was an opening—cut off the chunks.
Q. Did you then testify, "I recollect going down to the land office at Hudson or Willow River and signing papers before the land officers to prove up the land that I had entered?"

A. I think so. I went down to the land office.

Q. Did you then testify, "If it was contained in the papers that I did not enter upon the land to sell it on speculation, but to devote it to my own use, it was true?"

A. No.

Q. Did you then testify that "I did not enter it to sell on speculation, but devote it to my own use?"

A. No.

Q. Did you enter the land to sell on speculation?

A. No.

126 Q. What did you take the land for?

A. For a month's wages.

Q. Did you then testify at Chisago City, when your deposition was taken, as follows: "If the paper stated that I had not, prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I might acquire from the Government of the United States should inure in whole or in part to the benefit of any other person except myself, it was true?"

A. No.

By Mr. FLANDERS. I wish the reporter to note the fact that it has been deemed necessary by counsel for the defendants to call in a gentleman connected with their side of the case to assist the interpreter in interpre'ing these questions. Now, I expressly state that I do not in any way reflect upon his integrity or fairness, but I simply wish to have it appear on the record that there was great difficulty in interpreting these questions to the witness.

By Mr. BASHFORD. I wish to have it appear that the interpreter sworn by the court commissioner was not able to interpret readily the questions propounded, and that at his request the assistance was called in and without objection from any source.

Q. Did you at that time testify as follows: "I had made no contract or bargain to sell to any person or for any person the said land or for any part of it?"

A. No; I did not so testify.

Q. Did you then testify, "I can not recollect whether I paid any money for the entry or for the land?"

A. No; I did not pay anything on the land. I don't recollect that.

Q. Did you make your mark to your deposition taken at that time before George N. Hillman, notary public?

A. I don't remember marking my name.

Q. Did you not have any bargain with James Stinson to sell this land to him before you made the entry?

A. No.

Q. You entered that land for yourself?

A. I did not understand a transaction like that. I had just come over from the old country and I did not understand.

Q. You then followed out the advice of your friend, John Johnson, in this matter, did you?

A. Yes; I done what John Johnson told me.

Q. And John Johnson suggested that while you were up there
127 to work you might take up some land and make some money out of it?

A He told us to take some land, but I did not understand what the thing was.

Q. You don't recollect whether you paid for the entry of the land or not, do you?

A. No; I did not pay for it.

Q. And you don't know how did pay for it?

A. No.

Q. John Johnson was there transacting—doing—this business for you, was he not?

A. John Johnson told us that we should meet at the land office at Hudson.

Q. And John Johnson went with you to the land office?

A. Yes.

Q. And John Johnson helped you in making out the papers?

A. I don't say that.

Q. Who did help you in making out the papers?

A. That was done at the office.

Q. Who did it?

A. I don't know.

Q. Who interpreted for you at the office?

A. Johnson.

Q. John Johnson?

A. Yes.

Q. Did you sign a paper for Streeter?

A. Not that I recollect.

Q. Did you make your mark to this paper in the presence of Mr. P. Shaleen and C. G. Johnson?

A. I don't recollect that.

Q. Did you state in the paper or to Mr. Streeter that you never built a house on the land?

A. I could not say that; but I never did, for we all made shanties.

By Mr. FLANDERS. It is admitted by counsel that the Otto Wallmark, who served as interpreter in interpreting between the counsel and Lorens Johnson in the case pending in the circuit court of the United States for the western district of Wisconsin, wherein J. E. Gagnelius and John Ogren were complainants and James Stinson was defendant, is the same Otto Wallmark whose deposition has been taken at the instance of the defendants in the case wherein the present depositions are being taken, wherein the United States of America is complainant and James Stinson and Henry J. Stinson are defendants. It is also admitted that all the lands described in the bill of complaint in the action wherein the United States of America is complainant and James Stinson and Henry J. Stinson are defendants were entered by the defendants and at the time alleged in said complaint.

128 Recross examination by Mr. BASHFORD:

Q. Mr. Johnson, do you know Peter Norell?

A. Yes.

Q. Is he living?

A. He lives at Fish Lake.
Q. How far from St. Paul?
A. I suppose about fifty miles.
Q. Up near Harris, Minnesota?
A. This side of Harris.
Q. Do you know Andrew Wallmark?
A. Yes.
Q. Where does he live?
A. At Chisago City.
Q. Do you know Ole Westerlund?
A. No.
Q. Do you know Gustav Johnson Vieborg?
A. Yes.
Q. Where does he live?
A. At Chisago Lake.
Q. Is he the Gustav Johnson who made an entry about the same time—is he the same one?
A. I don't know. Gustav Johnson is here.
Q. Is Peter Norell here?
A. No.
Q. Or Andrew Wallmark?
A. No.
(The reading of the testimony to the witness and his signature is waived.)

ISRAEL JOHNSON. Recalled by the defendants.

Examined by Mr. SANBORN:

Q. You said that John Johnson went up with you?
A. I did.
Q. Do you want to correct that?
A. I guess I was mistaken. I believe not.
Q. You think John Johnson was not along?
A. Vieborg showed us the road and not John Johnson, I think. I will take that back, if you please.

Redirect examination by Mr. FLANDERS:

Q. Showed you the road where? From Superior? From Taylor's Falls to Superior?
A. Yes. We don't know how to go.
Q. Have you talked with anybody about that since you were on the stand?
A. With Wallmark.
Q. Which Wallmark, Otto? Did he come to you?
A. Yes; he comes to me and told me I was mistaken.
Q. He came to you and told you you were mistaken?
A. Yes; and I believe I was. It is so long a time I can not recollect.
Q. But John Johnson was in Superior while you were there,
129 was he not?
A. I believe not. He was in Taylor's Falls when we left there.
Q. Did you see him in Superior?

A. I can't recollect, but I am pretty sure I was mistaken.
Q. Didn't you see him in Superior at all while you were there?
(Objected to as leading.)
A. I don't think so. It is a long time, but Wallmark said he was not there, and when he don't know, I don't know.
Q. So you are depending upon Wallmark's statement?
A. Just what he told me.
Q. You rely upon what Wallmark tells you?
A. Yes, I believe what Wallmark tells me.
Q. How long do you say you were in Superior, now?
A. Well, I said it was nearly a month from the time we left Taylor's Falls until we get home, ago.
Q. Now, do you say, Mr. Johnson, that you did not see John Johnson there?
A. I saw him in Hudson.
Q. Do you say you did not see him in Superior?
A. I do say so, but I am not sure.
Q. Who else have you talked to besides Otto Wallmark about this?
A. Nobody else here was along with me—in my crowd when we was up there.
Q. Who have you talked with besides Wallmark since you were on the stand before?
A. No one.
Q. I think you said he came to you and said that you were mistaken?
A. He did that out in the hall.
Q. Who else was there?
A. He talked to me and he said I was mistaken in my witness, and so we talked the matter over.
Q. Who was there when you talked the matter over out in the hall?
A. Gustav Johnson was there.
Q. And who else?
A. Nobody else.
Q. This gentleman here?
A. No.
Q. This gentleman here (Mr. Stewart, of Chicago, Ill.)?
A. No.
Q. Or Mr. Bashford, or Mr. Sanborn?
A. No.
Q. What makes you think you were mistaken about John Johnson having been in Superior?
A. Because I was not certain, and when he said he was not there when he was there, then I think I must be mistaken, because Wallmark and I was there the whole time.
Q. You think you are mistaken then because Wallmark says you are? Is that it? Is that right, Mr. Johnson? You think you are mistaken because Wallmark said so?
A. Yes. That is the reason, because I can't exactly tell myself if he was along or not along.

130 JOHN LONQUIST, a witness produced on behalf of the United States, is sworn, is examined, and testifies as follows:

Examined by Mr. FLANDERS:

Q. Where do you live?

A. I guess I have to have some one talk for me. I have a cold, so I can hardly talk.

By the COMMISSIONER. Just go on for a while and we will see.

Q. Where do you live?

A. I live in the town of Franconia, in Chisago County, Minnesota.

Q. You have come here as a witness in this case, have you?

A. I have been called.

Q. How many miles have you traveled?

A. I guess nearly 50 miles.

Q. Are you a Swede?

A. Swede.

Q. When did you come to this country?

A. 1853.

Q. Where did you go when you came to this country?

A. I came to Chicago, and I went from there to St. Charles, in Illinois.

Q. But you finally came up to Minnesota?

A. Yes; I came up to Minnesota in the spring of 1864, about April; no, April, 1854, I mean.

Q. And where in Minnesota did you go?

A Right where I live now, in Franconia Township.

Q. Are you a married man?

A. Yes.

Q. And your family live there?

A. Yes, sir.

Q. How old are you now?

A. I am 70 years next month.

Q. Did you do anything about taking up some land in Douglas County, Wisconsin?

A. I guess so.

Q. Who spoke to you about it first?

A. John Johnson.

Q. Where?

A. Right at home.

Q. Was anybody with him?

A. Andrew Ogren.

Q. What did Johnson say to you?

A. He said to me that Stinson wants us to go up to Superior to work, but he don't say to me that we should take a claim for him; he said that I had to have my first paper; you know the first paper, along with me; and then we went down to Mr. Stanner—down in Taylor's Falls,—and he gave us the paper—first paper—and then we went from there to Superior.

Q. Now, who went to Taylor's Falls with you?

131 A. Andrew Ogren and Helleen, John Johnson, and some more I don't remember.

Q. Did you know Stinson then?

A. No; I never saw him.

Q. Then, after you got your first paper at Taylors Falls you went on to Superior?
A. Yes, sir.
Q. With all of those men?
A. Yes; some more, but I forget who it was.
Q. What were you to be paid for going to Superior?
A. $30.00 a month.
Q. Who told you that?
A. John Johnson.
Q. And what did he tell you you were to do up there?
A. He didn't tell us anything before we got up there. When we got up there he gave us an axe and we chopped down some wood.
Q. When you got there what did he tell you then?
A. Who?
Q. John Johnson.
A. Well, he didn't tell me anything; he set us out to work.
Q. Where?
A. Right in the place, I don't know what it is, in Superior.
Q. What kind of work were you doing?
A. Chopped down some trees in the streets; I believe it ought to be streets, it was all wood then.
Q. How many of you were there at Superior?
A. I forget that.
Q. About how many?
A. Twelve or thirteen, I believe.
Q. Where did you live in Superior?
A. We lived in a little shanty; I guess that was built before we got there, and we stayed there, all of us in the little shanty, and took our victuals and grub there; slept in that little house all together.
Q. How long did you stay in Superior?
A. I forget; I think it was about a month.
Q. Did you see Stinson there?
A. I saw him several times.
Q. Where did you see him?
A. On the street.
Q. Did you do anything about going out on some land?
A. Well, I believe so.
Q. What did you do?
A. We went out in the woods and put up the shanty, put some kind of brush on the roof.
Q. Who went out in the woods?
A. Me and three others.
Q. Who went out with you?
A. I can't tell; I have forgotten.
Q. Did John Johnson go out with you?
A. Yes; but he didn't stay there.
Q. He showed you where to build your shanty where your claim was, did he?
(Objected to by Mr. Sanborn as leading.)
A. John Johnson he put each of us on the claim, but I don't know anything about the claim.

132 Q. What did he do with each of you, you and the three others, where did he tell you to stay?
A. Right there and put up the shanty.
Q. He told you to stay on one piece of ground?
A. We stayed on one piece of ground, but I believe it was a corner; I think so, I am not sure.
Q. How large a tract of land did you settle on?
A. I can not tell.
Q. How much did you understand it was?
A. I can not tell that.
Q. Were you told that?
A. I don't remember.
Q. As to whether it was 160 acres or 80 acres, or what were you told?
A. I was never told whether it was 5 acres or 160 acres or anything.
Q. What did you do on your piece of land, did you build anything there?
A. We built that shanty, I told you.
Q. Was there only one shanty built?
A. Only one. The three men lived there, slept there, all four of us; only one shanty was built.
Q. What did you say about its being a corner?
A. I can't tell whether it was a corner or not, it was out in the woods.
Q. What did you say about that?
A. I think it must be a corner.
Q. A corner of what?
A. Some kind of a corner; I won't tell what I don't know.
Q. What did you think it was?
A. I thought it was a little shanty; four of us slept there one night. I can't tell you about the corner.
Q. A corner of what in the woods?
A. Yes.
Q. A corner of a section?
A. Well, I don't know.
Q. Well, did you think it was?
A. Well, I guess I think it was a section.
Q. Did you think that was a corner of the section?
A. That is what I think.
Q. What made you think that?
A. There was four of us to sleep there.
Q. Did you understand that these four were all taking up claims?
A. No.
Q. Well, why do you say there were four to sleep there?
A. Because there was four.
Q. What did you understand they were going out there for?
A. Well, I guess they must be out there to build houses on a claim.
Q. And John Johnson went out there with you?
A. Went over there, but didn't stay.
Q. Did he show you where to build a shanty?
A. Yes.
133 Q. How long did it take you to build that shanty?
A. It took us about two days.

Q. What kind of a shanty was it?
A. There were some logs, a place for a door, and a hole for a window.
Q. One door and one window?
A. Yes, sir.
Q. Was the door left open?
A. We had some kind of brush.
Q. How was it about the roof?
A. Some kind of a roof that we took out of the woods.
Q. You slept there one night?
A. Yes, sir.
Q. What did you do then?
A. Then Stinson came there and he talked with the boys, but he never talked a word with me; I never talked with Stinson yet.
Q. Who did he talk with?
A. He talked with Ogren.
Q. What did he say to them?
A. I can't tell; I couldn't understand.
Q. Did they tell you what he said to them?
A. No; most of them were like me.
Q. Did they tell you what Stinson said?
A. I don't understand what he said.
Q. Did these three men—did these other men tell you what he said?
A. No.
Q. Did anybody tell you what he said?
A. He said he wants us to preempt land for him.
Q. Who told you that?
A. Andrew Ogren.
Q. Andrew Ogren told you that?
A. Yes, sir.
Q. Did Stinson come there alone?
A. Yes; he was alone.
Q. John Johnson was not with him then?
A. No.
Q. Now, then, what happened then—what did you do then?
A. We went out from the shanty and went home again to Taylor's Falls.
Q. You went back. How soon did you go back after Stinson came?
A. I forget that.
Q. The same day?
A. No.
Q. The next day?
A. I think it was the next day.
Q. Who went back to Taylor's Falls.
A. We all went back to Taylor's Falls.
Q. How many—ten or twelve?
A. I don't know.
Q. These men who had been living in the shanty together in Superior?
A. Yes.
Q. The same ones?
A. Yes.
Q. Who went back with you to Taylor's Falls?

A. All those boys.
Q. Did Stinson go back with you?
A. Yes.
Q. And John Johnson?
A. Yes.
134 Q. How did you go back?
A. We walked back.
Q. How long did it take you?
A. I can't say; I forget how many days; three or four days, may be.
Q. Did Stinson talk with you when he was going back?
A. No.
Q. When you got back to Taylor's Falls did he talk to you?
A. No.
Q. Did John Johnson talk to you?
A. Yes.
Q. What did he say?
A. He gave us money in Taylor's Falls.
Q. Who paid you the money?
A. John Johnson.
Q. For Stinson? Was Stinson there when he paid it?
A. Yes, sir.
Q. And where did Johnson get the money?
A. Got it from Stinson.
Q. How much money did he pay you?
A. I got $30.00.
Q. How was it with the other men?
A. I can't tell.
Q. Did they get $30.00, too?
A. I believe so.
Q. Was anything said to you there at Taylor's Falls about going to Hudson?
A. No.
Q. You did go to Hudson, didn't you?
A. Not that year. They didn't take me down to Hudson until the next year. Johnson and Wallmark was down there at the same time.
Q. Who took you down?
A. John Johnson, the same day that Otto Wallmark was down there. Well, I guess not any more than Israel Johnson and me.
Q. Israel Johnson and you?
A. Yes.
Q. Who did you see down to Hudson?
A. Otto Wallmark, Andrew Wallmark, and I forget the other boys that was there. They stayed outside of the door, and Stinson was with them.
Q. Otto and Andrew Wallmark?
A. Yes, sir; they were outside of the house there.
Q. What house?
A. I guess it was the land office.
Q. The register's office?
A. Yes, sir.
Q. Stinson was there when you came?

A. Yes, sir.

Q. Now, then, what happened?

A. It happened that way, when I came down there he didn't talk a word to me, but he took up $2.00 and gave it to me and told me to get some snaps.

Q. Who did that?

A. Stinson. He gave me the money and I took all the boys, and not any of them wanted to have anything, so I kept the $2.00 myself. After we came down again this John Johnson took us up in the office—land office—and there we signed. There was a fellow up there, and he stand up; he stood there and he told us to hold up our hands. I don't know what that means. I don't take my hand up, and John Johnson take hold of my hand and lifted it up that way and then he looked at me, and I guess we were sworn, and after that we were done. He had something to say to Stinson there; but I couldn't understand a word, so when we were done we went out again to go home.

Q. Who did?

A. All of us.

Q. Did you go home then?

A. Yes.

Q. Mr. Lonquist, did you pay any money at the land office when you went down?

A. No; not a cent.

Q. Did he pay the money to the land office for you?

A. I can't tell.

Q. Did you get any money at Hudson?

A. Yes, sir.

Q. From whom?

A. From Stinson.

Q. How much did you get?

A. I got $20.00.

Q. Was that paid by Stinson himself?

A. That was paid by Stinson himself; he handed $20.00 in gold to me and I just took it, and he went back into the office again.

Q. Did you make a deed of this land to Stinson?

(Objected to.)

A. Not that I know.

Q. Mr. Lonquist, do you remember the description of the land?

A. No; I don't; I never hea'd of it; I didn't ask for it, either.

Q. What was done about the first paper?

A. He said we must take our first paper to Superior, but nothing was done about that.

Q. They didn't ask you for it?

A. No.

Q. How was it about the other men that were down there to Hudson; did they get money from Stinson?

A. I can't tell; I didn't see anyone get any money but myself.

Q. What did Stinson say to you when he paid you the money?

A. I couldn't tell you; but he said something, but I don't understand it.

Cross-examination by Mr. BASHFORD:

Q. You never understood a word that Stinson said to you, did you?
A. No.
Q. You couldn't talk English at all at that time?
A. No.
Q. And he couldn't talk Swedish, so far as you know?
A. No.
Q. You went up to Superior to do some work, and came back and got some pay for it?
A. Yes.
Q. You never entered any land that you know of?
A. No.
Q. You went up to Superior to do some work, and came back and got some pay for it?
A. Yes.
Q. You never entered any land that you know of?
A. No.
Q. And you never sold any land to Stinson that you know of?
A. No.

Q. This all happened a good many years ago and has passed
136 out of your mind, has it not?

A. It happened a good many years ago, but I think I tell pretty well about it.

(The reading of the testimony and the signature of the witness is waived.)

GUSTAV JOHNSON, a witness produced on behalf of the United States, is sworn, is examined, and testifies as follows:

Examined by Mr. FLANDERS:

Q. Where do you live?
A. I live in Chisago County, town of Chisago Lake, four miles from Lindstrom.
Q. You came here as a witness in this case, didn't you?
A. I was subpœnaed the other day to come here.
Q. How many miles did you travel to come here?
A. Well, they call it forty-three miles from my place.
Q. You are a Swede, are you not?
A. Yes.
Q. And what year did you come to the United States?
A. I came here in 1854.
Q. And did you come to Minnesota then?
A. Yes, sir.
Q. Where in Minnesota?
A. I landed at what you call the Boom—Osceola Boom—and stayed there about two weeks before we get up to Chisago Lake.
Q. You came to Chisago County then?
A. Yes.
Q. Have you lived there ever since?
A. Pretty much.
Q. How old a man are you?

A. I am sixty-two next summer—sixty-one, going on sixty-two.

Q. John Johnson—what relation was he of yours?

A. There was one John Johnson that was my brother, and there was another John Johnson up there that was no relation to me at all.

Q. Now, do you know James Stinson?

A. Know him? Yes; I saw him once in Superior in '56; that's all I have seen him.

Q. Did you hear any talk about Stinson and your brother, John Johnson?

A. No.

Q. Never hear any conversation at all?

A. Yes; I was rowing him in a boat over from Superior Bay and up around the Left Hand River, and he was going up with my brother to make some improvements on a claim, and of course they were talking together, but I was what you call "green Swede," so I don't understand English at all then.

Q. Did you hear between them afterwards?

A. No.

137 Q. In St. Paul?

A. Yes; in St. Paul. That was three years after, I think. In 1859, I think it was. He was on the Fuller House.

Q. Now, who was there; your brother?

A. My brother was talking to him there, to get some land from him.

Q. Talking to James Stinson?

A. Yes.

Q. Go on and tell what the talk was?

A. He had promised him some more land up there. He got some land from Stinson—fifty-seven acres for a claim he made over at Superior. He promised to give him as much land at Chisago Lake as he preempted up there for him, but he only got fifty-seven acres. Now, he wanted another fraction there, but that was what he was talking about to him at the Fuller House, but Stinson answered that he didn't have a map or else he would write out the deeds, but he didn't have a map.

Q. Was there anything said by Stinson to your brother about not having kept his contract?

A. Yes; he said, "You can get that land," says he, "for what it cost me. You did not fulfill your contract."

Q. That is what Stinson said to your brother?

A. Yes.

Q. Did you ever go over to Superior with these other men?

A. No; I was not here when the first party went up. I came from Sweden that summer. They went up in July and I came here in August, so that my brother was up there when we came.

Q. Did you go down to Hudson?

A. No; I was not down to Hudson that year.

Cross-examination by Mr. BASHFORD:

Q. Where had you lived during the three years after you came here—the first three years?

A. I lived at Chisago Lake when I was at home. I stayed in Superior a year and a half.

Q. At work; were you among your own countrymen?
A. I stayed down at Chisago when I was not out to work.
Q. You had not acquired a very great familiarity with the English language, had you, during those first three years?
A. No, sir.
Q. You could not understand what was said by your brother to Stinson, could you?
A. When he was talking in St. Paul I could understand considerable.
Q. When you were in St. Paul you did not understand the English language, did you?
A. Just about as much as my brother. He had been here a year before.

By Mr. SANBORN:

Q. Your brother is dead, and when did he die?
A. He died, as near as I recollect, in 1861.
138 Q. Do you know?
A. He got drowned at Hastings, in the Mississippi River, when the First Regiment of Minnesota went South.
Q. Do you know another man by the name of John Johnson?
A. Yes.
Q. Where did he live?
A. Up there at Chisago Lake, between Centre City and Taylors Falls.
Q. Was he a relation of yours?
A. No.
Q. Was he known as John Johnson, the second, and your brother known as John Johnson, the first?
A. I don't know whether he was named in that way or not.
Q. Did you understand that he was one of the men that preempted land up at Superior?
A. I don't know.
Q. Is he living?
A. He got killed working on the road. A tree fell on him when he was working on the road.
Q. When was that?
A. That was long ago; I could not say.
Q. Twenty years?
A. Maybe thirty years.
Q. Now, do you know a man by the name of Gustav Johnson Vieborg?
A. Yes; that is my neighbor.
Q. Is he now living?
A. Yes.
Q. Was he ever known by the same name that you bear, Gustav Johnson?
A. Yes; but I think he had his changed—his name—about '64 or '65; I forget. He had it changed in the legislature. Before that he went by the same name I did. There was four of us that took our mail out of the same post-office, and that's the reason he changed his name.
Q. Gustav Johnson Vieborg was one of the men that also entered land at Superior?
A. Yes.

Q. Have you seen Gustav Johnson Vieborg?

A. No; I have not seen him to-day.

(The reading of the testimony to the witness and his signature is waived.)

DAVID CARLTON, a witness produced on behalf of the United States, is sworn, is examined, and testifies as follows:

Examined by Mr. FLANDERS:

Q. Mr. Carlton, you live in St. Paul?

A. No, sir; I live in Minneapolis now.

Q. What is your occupation?

A. I have been mining. I have been in Cripple Creek for the last two years.

139 Q. Did you at one time live in Superior, Wisconsin?

A. I did.

Q. When was that?

A. I went there in the spring of '52, winter of '52, and '53, I think. I went in there on snowshoes.

Q. How long did you live there?

A. I left there in the winter of '57, in December of '57.

Q. You were then, when you left there, upwards of twenty-five years of age?

A. More than that, I guess. I was born in 1824.

Q. Now, did you know James Stinson?

A. I did. I knew him for several years, off and on.

Q. What is the fact as to whether you saw him with bands of Swedes there?

A. I saw him with Swedes. He brought a lot of Swedes there and cleared the streets in what is called Old Superior. He had a good many Swedes in his employ.

Q. And what was he apparently doing with them?

(Objected to by Mr. Bashford as leading and as incompetent and immaterial.)

A. Well, he appeared to be clearing the streets out there part of the time; but I don't know how long, possibly a week or two.

Q. And as to whether or not these Swedes were under his direction or control?

(Objected to by Mr. Sanborn as leading.)

A. I could not tell that. I suppose they were. I have no way of knowing and I do not like to testify to anything like that.

Q. Except as indicated by appearances? By appearances what would you say?

A. I thought he had control of them. At this time I was locating land for settlers, putting them on claims, consequently we used to come in contact with one another once in a while. We were not in love with one another at any time.

Q. What do you know, Mr. Carlton, with reference to his locating any of these men upon lands?

A. I could not swear to anything positive. I saw him out there. I could not swear to anything of that kind. I saw him on the Left Hand River.

Q. With whom was he out there?

A. He was out there with three or four men; was in the woods locating a piece of ground—a quarter section. I disremember the ranges and towns now. At that time I had them all. Casto contested a claim afterwards. He went back to Kentucky, and this claim was jumped where they locating at this time. I don't know how the claim came out. Casto was killed in a duel, I understand.

Q. What did you see Mr. Stinson doing out in the country?

A. He was not doing anything himself. He was building a little shanty at this time. I didn't see him doing much.

140 Q. Was he giving directions to these Swedes?

(Objected to by Mr. Sanborn as leading.)

A. Yes.

Q. As to whether or not he had a surveyor out there at any time?

A. The land was all surveyed and sectioned off. The lines were all plain and visible.

Q. Did you talk with him yourself?

A. I talked with Stinson a hundred times, but I don't remember anything particular we talked about.

Q. Did you talk with him with reference to whether or not he was locating any land out there?

A. No; I don't know as I did. He was locating land around there. I was putting men on claims, and I would take them out there and show them a location; consequently we used to come in contact once in a while. But so far as he was concerned, I never heard him say anything regarding land. It was always John Johnson, Ole Olson, Swen Larson, or some one else's claim.

Q. What did you talk with him about?

A. I don't know. Nothing of particular consequence that I know of. It was a long while ago.

Q. I would like to have you give us what you recollect.

A. I wintered up there with Stinson the first winter I was there. I was around there and we all lived in two or three little huts on the Left Hand River.

Q. When was this that he was out there with the Swedes in the street and out in the country?

A. I think that was about '54. I think it was about '54. Could not not say positively, but the summer of '54 is as near as I can recollect.

Q. What is the fact, Mr. Carlton, as to whether or not it was reported, commonly reported, about that time that Mr. Stinson was using large numbers of Swedes for the purpose of procuring lands contrary to the laws of the United States?

(Objected to by Mr. Sanborn as incompetent and immaterial and also as leading.)

A. That was the common talk in the country there.

Q. I think you said you left there in 1857?

A. I think I left there in 1857 or 1858.

Q. Have you been back there off and on since?

A. I was back there once since, but did not stop any length of time. I stayed there a day or two.

Q. What is the fact, Mr. Carlton, as to whether or not reports of the same character have been current since that time?

(Objected to by Mr. Sanborn as incompetent and immaterial and also as leading.)

141 A. I have been in the West since the war. I have heard that the Superior crowd have all passed over the range. Pretty nearly all gone. I have never come in contact with them since.

Q. Did you talk with John Johnson?

A. Swede?

Q. Yes.

A. I don't know. I can't locate Johnson. There were four or five Johnsons there. Three or four that I know. The John Johnson about whom some testimony was given tending to show that he was the right hand man, I never had any particular talk with him.

Cross-examination by Mr. BASHFORD:

Q. You have never been very friendly with James Stinson, have you?

A. No, nor unfriendly either. I was locating lands—putting settler' on lands and he was gobbling it up pretty fast—but we were not enemies.

Q. You have taken some pains, have you not, to let it be known that you could give some testimony that would not be very favorable to him?

A. I never heard a word about this until I got subpœnaed yesterday.

Q. And during that time you have been to the war and been in the mining camps and over half of the United States?

A. Yes. All over the country.

Q. You have not a very clear recollection of what occurred some forty or fifty years ago?

A. No, sir.

Q. Did you take a preemption yourself?

A. Yes.

Q. Can you give us the description of it?

A. No, I can't. It was over there in that country. Over near the Left Hand River.

Q. How far from Old Superior?

A. Fifteen miles south, southeast.

Q. This Left Hand River that you speak of was the Nemadji River?

A. Yes, sir.

Q. What year did you enter that land?

A. I think in 1855.

Q. Where did you live that summer, in 1855?

A. In Superior—around in that country.

Q. You were locating land at that time?

A. Yes, sir. Putting settlers on claims, whenever any settlers came there and wanted to locate land.

Q. Did you buy any of them out?

A. I was not buying. I was selling. They had no titles then; they were just locating.

Q. The land office then was located at Hudson?

A. The land office at that time was, I think, at Superior. I think it was moved in July, 1855.

142 Q. Do you remember who was the first register?

A. Hyer was register and a man from Madison, Wisconsin, I have forgotton his name, was the first receiver.

Q. In order to get out to this claim of yours, some fifteen miles out, do you go out afoot?

A. Yes, I walked out. There was no other way of going.

Q. You proved up your claim there at Superior?

A. Yes.

Q. What month?

A. I don't recollect. It was along in the summer. I don't recollect whether it was July or August.

Q. Did you dispose of your claim later on?

A. It went in the wreck. I mortgaged it, and I never redeemed it. It went along with everything else in 1857. Everything went to pieces and land was not worth paying taxes on.

Q. The Casto people retained their land and paid taxes on it?

A. It was a contested claim and I left before the trial came off, so I don't know whether he got it or not. I heard of Casto's getting killed in Kentucky.

Q. Which side of the Nemadji River was this section?

A. It was on the west side.

Q. Now, is it not true, Mr. Carlton, that there was a good deal of talk up in that country at that time about other people locating Indians on lands and perpetrating frauds on the Government?

A. There was a good deal of talk about that, yes. By the Old Superior crowd, as they called it, composed of Judge Nelson, D. A. J. Baker, Mr. Stinson, Rice—Ed. Rice, quite prominent as Indian agent, afterwards. Senator Rice from St. Paul. Nelson was afterwards judge of the United States court here. Nettleton. Cochran. Jesse D. Bight.

Q. There was a great deal of talk about frauds on the Government by a good many people?

A. Yes. There was plenty of talk but they had the inside track and we could not do much.

(The reading of the testimony to the witness and his signature is waived.)

By consent of counsel the further taking of this testimony is adjourned until 9 o'clock a. m. of Thursday, the 10th day of March, A. D. 1898, at the same place, to wit: Room 3, in the post-office building in the city of St. Paul, Minnesota.

Pursuant to adjournment the further taking of this testimony is continued at 9 o'clock a. m. on Thursday, the 10th day of March, A. D. 1898, before Charles L. Spencer, United States Commissioner for the District of Minnesota, at his office in room 3, in the post-office
143 Building, in the city of St. Paul, Minnesota, when were present, as on the preceding day, James G. Flanders, esq., special assistant to the United States attorney for the western district of Wisconsin; R. M. Bashford, esq., and A. L. Sanborn, esq., attorneys for defendants, James Stinson, et. al.

PETER M. PETERSON, a witness produced on behalf of the United States, is sworn, is examined, and testified as follows:

Examined by Mr. FLANDERS:

Q. Where do you live, Mr. Peterson?

A. Town of Atkin, Meeker County, Minnesota.

Q. You came here as a witness in this case?
A. Yes; I came here.
Q. How far have you traveled to come here?
A. About ninety miles—from Atwater.
Q. Are you a Swede by birth?
A. Yes.
Q. What year did you come to the United States?
A. 1853.
Q. Did you come to the State of Minnesota direct?
A. I came to Chisago Lake.
Q. How old a man are you now?
A. 66 years. Be 67 next June—14th day.
Q. Now, did you do anything about taking up some land in Douglas County, Wisconsin?
A. No; I did not take any land, but I was working for Stinson there. There was another fellow Stinson hired to get fifteen or sixteen men to go up there and work for him, and so he come to us fellows around there and told us if we want to work we can go up there for $30.00 a month, and we all concluded that we would go; and when we get to Taylor's Falls he asked us if we had any claims before, and there was two or three—I can't remember their names—more besides me that had claims down at Chisago Lake, and we could take any claim, and he said "If you have a claim, we don't want you." The boys said, "Well, if you won't let us all go, none of us will go," and that's the way we come to go there. We worked there a couple of months.
Q. Who was it told you to go to Taylor's Falls?
A. That fellow Stinson. We called him Stinson. He hired the other man who hired us to go. That fellow is dead.
144 Q. What was his name?
A. John Stinson.
Q. John Stinson is the man that hired you to go to Superior for Stinson?
A. Yes.
Q. Did you say Stinson?
A. Yes; he was along with him when we went home again. He traveled just like we did.
Q. When did you first see Stinson?
A. The first I saw him was in Superior.
Q. Who was it at Taylor's Falls that asked you if you had claims?
A. There was an old storekeeper by the name of Stanner—no; Fox, I mean—who was going to let us have provisions to carry us over there.
Q. Was Johnson there at Taylor's Falls?
A. Yes; he was along with us.
Q. Did Johnson say anything to you about having claims?
A. Not until we had been there a month. We were working over there clearing the streets, and before we went home Stinson told us to go to the woods for claims.
Q. At Taylor's Falls you said that somebody asked you if you had had a claim before. Who was that?
A. That was Stanner, I think. If I remember right, Stanner and Fox had a store together, and they were going to give us provisions to carry us along there at Superior.

Q. Who was it that told you if you had a claim already they did not want you to go?
A. He did—Fox.
Q. Did Johnson say anything about that?
(Objected to as leading.)
A. Yes, sir.
Q. What did Johnson say?
A. He didn't say nothing. He did not know any more than we did; he just hired us for work.
Q. Who hired you?
A. John Johnson.
Q. For how much?
A. Thirty dollars a month.
Q. How many were there that went along?
A. If I remember right, there was fifteen.
Q. Now, when you got over to Superior, what did you do there?
A. We cleared some streets, cut some wood, and helped them drive pile drivers.
Q. Who told you what to do?
A. Stinson told Johnson to tell us what to do, and he let us out to somebody else to work. I don't believe Stinson had any work himself that I know of.
Q. Who was the boss?
A. I would not say that we had any boss at all. He did not care what we were doing, but John Johnson was the man that looked after the boys.
Q. Did you see Stinson at Superior?
A. Yes; we were along with him and he told us about going out in the timber.
145 Q. When was that?
A. That was in the latter part of September, I think, as well as I can remember. I think it was then, but I can't remember the date.
Q. Well, go on.
A. We built a shanty.
Q. Who were out there?
A. We was along with all the boys. Stinson himself, too. He laid out the claims himself. We did not anything about the lands.
Q. And when you got to the woods what did Stinson tell you?
A. Well, we was building shanties for them other claimants, you see.
Q. Who showed you where to build shanties?
A. This Stinson did.
Q. How many acres in a claim?
A. Well, I don't know if there was any fractions; there was generally 160 acres in a claim.
Q. How was it as to one shanty on 160 acres?
A. Yes.
Q. What did Stinson say as to what the men should do?
A. Well, he told them they should build a shanty, make a hole for a fireplace in the middle of it. I had no claim, but I heard him tell the other boys that when we got to Hudson we should not let anybody else have the claims except him, and that they should prove up and give him the deed for it.

Q. What kind of shanties were these?

A. Some small tamarack—spruce; something like that. Anything we could get hold of, and put little spruce trees on the top for a roof.

Q. Was there a door in it?

A. Well there was no door made. They had some old rags they hung before the door.

Q. How high was the shanty?

A. Probably eight feet; something like that; I can't exactly tell because it was so long ago.

Q. Now, as to whether or not there was one shanty for every claimant?

A. Yes.

Q. How many shanties did you say were *built there*?

A. Well, I did not see them all. He had some built before we got there, and he built some afterwards. While I was along with him, I can't say exactly, but I think there was about eight or ten that was built while I was along with him. He had a lots more while I was not with him. I know that.

Q. After these shanties were built where did you go?

A. We came home, and he followed us home himself.

Q. Where did you go first from Superior? Taylor's Falls?

A. Yes; Taylor's Falls.

Q. Now, you say that Stinson went with you?

A. Yes.

Q. How did you go?

A. We traveled to St. Croix River, and we built a kind of a flat and went down the river and stopped at a place called Sun Rise, I think, and had our supper there, and went to Taylor's Falls from there.

146 Q. Except as you went part of the way on the river, you walked?

A. Yes; sixty miles from Superior, right through the woods; no road at all. To St. Croix, they called that sixty miles; then from Sun Rise to Taylor's Falls, eighteen or nineteen miles.

Q. What is the fact as to whether Stinson walked along with you?

A. Yes; he was along with us all the distance from Superior.

Q. Where did your party live in Superior; you fourteen or fifteen men?

A. We lived in a kind of a log house there in the timber when we was there.

Q. When you were working on the streets and on the pile driver?

A. We worked on the first street that was cut through, and camped in the log house. We took our own victuals and grub to live on.

Q. Did you all live together there?

A. Yes; all together.

Q. Was John Johnson there?

A. Yes; he was the headman for Stinson.

Q. How was it as to whether or not Stinson was around there when you were working on the streets?

A. Yes; he was around there. There was one hotel—a poor one at that.

Q. After you got to Taylor's Falls, what was said to these men?

A. He said he had no money then, and he told us that he would be back in a couple or three weeks and pay us for our work.

Q. Who told you that?

A. He told us in Taylor's Falls. He had no money with him—Stinson. He came back all right. We got our money.

Q. Where did he pay you?

A. He left mine with John Johnson, and John Johnson paid me in Chisago County what was coming to me.

Q. What was said, if anything, about going to Hudson?

A. He told the boys not to let anybody else have their claims because he wanted them.

Q. At Taylor's Falls did you hear anything said about any of the men going down to Hudson?

A. No.

Q. What year was this?

A. In the fall of 1854. I think he was down there in October of '54.

Q. Mr. Peterson, how long a time did you spend out there in the timber where the shanties were built? How long were you there?

A. I think it was not quite three days.

Q. After that, did you come right back to Taylor's Falls?

A. We got ready to come back to Taylor's Falls.

Q. What is the fact as to whether you went back to these shanties?

A. No; we have never been there.

Q. Any of the men?

A. We all went home together.

Q. Tell us those you can remember that were in the party.

147 Who were there?

A. I can't hardly remember. They are dead, most of them.

Q. Tell the most that you can remember?

A. One fellow by the name of Alstrom, dead; Matthewson, I believe, there was; Berg or something, I can't recollect; he is dead; one fellow Norell, was he here? I guess he live there at Cameron; Helleen; John Johnson. I can't remember them all now.

Q. How was it about Andreas Swanson?

A. I have not lived there for twenty-seven years and I don't remember that name.

Q. Mr. Peterson, do you think Ogren was sometimes called Andreas Swenson?

A. Yes, I think his name was Andrew Ogren.

Q. There is said to have been an Andrew Swenson there. Do you think he is the same man that was called Ogren?

A. Well, there might have been an Andrew Swenson Ogren for all I know. We always called him Ogren.

Q. How was it about Swen Larson?

A. He was there but he is dead.

Q. Peter Norell?

A. Yes.

Q. Lorens Johnson?

A. Yes. He was here yesterday. I think I met him.

Q. Martin Larson?

A. Yes.

Q. Aaron Peterson?

A. Yes.

Q. Swen Magnuson?

A. Yes.

Q. John Johnson?
A. Yes.
Q. Was there another John Johnson, too?
A. I can't remember that.
Q. You didn't go to Hudson, did you?
A. No; I was not there.
Q. You did not take any claim up there?
A. No.
Q. Why not?
A. I had a claim myself. I had one at Chisago Lake, and I could not take one because I had a "preempt."

Cross-examination by Mr. BASHFORD:

Q. You never saw Mr. Stinson until you got to Superior?
A. I saw him there, but had never seen him before.
Q. Who was it made arrangements with you about going up there?
A. John Johnson hired me.
Q. You don't know what Stinson told Johnson yourself, do you?
A. No.
Q. You never talked with Stinson?
A. No.
Q. You could not understand what Mr. Stinson said, could you? You depended upon what Johnson told you?
A. Yes.
Q. You did what Johnson told you?
A. Yes.
148 Q. And you had never seen Stinson until you got to Superior?
A. No.
Q. You have never seen him since?
A. Yes, I have seen him once after we have been there in the fall.
Q. Was this John Stinson?
A. The oldest fellow. I don't know the difference. They used to call him Stinson.
Q. You don't know whether it was Stinson or Stimson, do you?
A. Amongst ourselves we called him Stinson. The oldest fellow I suppose was the head man.
Q. You don't know what the first names were of either of them?
A. No. Probably I heard it but I forget that.
Q. Johnson hired you to go up there to do work on the streets?
A. He didn't say; he just hired us to work.
Q. All the arrangements you made with Johnson was to do some work at $30.00 per month, you went up there to do the work, came back, and got your pay from John Johnson? That is is all you know about it?
A. Yes, sir.
Q. All the rest you have told us you have heard others say?
A. I heard some, but I have told what I saw while I was along with them.

Redirect-examination by Mr. FLANDERS:

Q. Did you see Stinson at Chisago Lake?
A. He was at Chisago Lake, but I didn't see him.
Q. Did you see him after the time you saw him at Taylor's Falls?

A. Yes; at Taylor's Falls later.
Q. Did you have any talk with him?
A. No.
Q. Was he the same man that was over at Superior?
A. Yes.
Q. How old a man was he?
A. Well, probably he was about thirty-five or something like that. I never heard anything about that, but his brother was younger. Probably about twenty years old.
Q. And how old do you think this man was?
A. As near as I can judge thirty or thirty-five; that's all I can tell about it, because I never heard how old he was.
Q. Did you say you came to the United States in '53?
A. Yes.
Q. As to English, how much English could you understand or speak?
A. I could only understand a few words.
(The reading of the testimony to the witness and the signature is waived.)

149 GEORGE R. STUNTZ, a witness produced in behalf of the United States, is sworn, is examines and testifies as follows:

Examined by Mr. FLANDERS.

Q. Where do you live, Mr. Stuntz?
A. In Duluth, Minnesota.
Q. Did you formerly live in Superior?
A. No; well, yes, I did for a short season, a couple of years.
Q. When was that?
A. In 1858 or 1859; somewhere along there; '59 or '60, just before the war. I had a residence there and voted.
Q. You came from Duluth here as a witness, did you?
A. Yes, sir; I was subpœnaed about a week ago.
Q. How many miles is it from Duluth here?
A. One hundred and fifty-four, I understand, by the railroad. I came on the road.
Q. Now, did you know James Stinson?
A. Yes, sir.
Q. When did you know him?
A. I knew him in '54; 1854 he was at the head of the lake for a short time.
Q. And where were you at that time?
A. I was at a trading post on the opposite side of the bay.
Q. From what?
A. Old Superior.
Q. What is your profession?
A. Surveyor.
Q. And was at that time?
A. It was at that time. I had a contract the time Stinson was there for subdividing the section or township in which a portion of Old Superior lies.
Q. For the Government?
A. Yes.

Q. Now, did you have any talk with Stinson in regard to those subdivisions and your services?

A. Before I took the contract I did.

Q. What was the talk?

By Mr. BASHFORD. The stipulation as to objections still holds, I suppose?

By Mr. FLANDERS. Certainly.

A. He came to me and wanted to know if I would take a contract for subdividing that township—township 49, range 14. I had a contract two years before; that is, worked there two years for the Government in Douglas County; but I was not engaged then. I had got
150 that off my hands. He wanted to know if I could undertake to subdivide the township early in the season. That was when I first saw him up at the head of the lake, and I told him I didn't know of any objection then. He said, "There are a lot of us that want to get this done," and that he would get a survey ordered if I would engage to do it. I had no dealings with him any further than when I consented to do the work to accommodate them if the Government ordered it.

Q. What did he say further in that conversation, Mr. Stuntz?

A. I don't think I had any further talk or any further conversation with him at that time.

Q. What did he say about surveying this subdivision as quickly and as quietly as possible?

(Objected to as leading.)

A. He said something about it being quietly.

Q. What did he say on that subject?

A. Well, he said, "We are anxious to make some investments in lands there, and we want to get through with it quietly."

Q. Who procured an order for the survey of these townships?

A. That I never knew. I was here corresponding with the Surveyor-General at that time and was informed that I would be forwarded a contract to subdivide that and some other townships that summer.

Q. Did Stinson say anything about who procured it?

A. No; the contract came to me as they usually came, from the Surveyor-General, you know, already prepared to be signed, and I did the work as rapidly as I could on account of the weather, and got it off my hands some time in June—the whole number of townships that I had in that contract.

Q. And Superior was in a part of one of these townships?

A. Part of two of them, I think; the limits of it now is. The range line between ranges 13 and 14 ran right down through the old part of the city; I had subdivided the old part, that is, range 13, in June, '53—in 1853, that was the second year I had been operating there. In '52 I ran the State line between Minnesota and Wisconsin.

Q. What did he say, if anything, about procuring these lands with as little trouble as possible?

A. He didn't make any such assertion to me. It was merely to execute the contract as early in the spring as I could and not to make any noise about it to excite people about the country, as I understood the matter in that light.

Q. Now, did you see Stinson, during the time you were making that survey, with any men?

A. Yes, sir; the first day I operated under the contract. I got my crew made up and went into the woods, and there was a crowd of men following me all day, and Stinson was one of them.

Q. How many men did Stinson have with him?

151 A. There were twelve or fifteen in the morning, I should think. I had a nice day and I ran up five or six miles that day.

Q. Who were these men that were with Stinson?

A. There were a good many half breeds—mixed bloods.

Q. As to whether there was any Swedes?

A. I don't remember any. I don't think there was. They were not known to me.

Q. As to whether or not this party appeared to be under his control?

A. He seemed to be talking with them a great deal. I was busy running lines and did not pay much attention to them. I noticed they put up shanties as fast as I would locate corners. I would run to a random line and get back to the quarter post and find a shanty well under way on each quarter.

Q. How was it during the time you were making that survey as to Stinson, as to whether he followed you or not?

A. He didn't follow me up after the first day. When we got up to where there were contested claims work was being done and improvements made and the parties were prepared to defend their premises. I adjourned the survey in the middle of the afternoon to prevent a riot, and then bad weather set in and I didn't see Mr. Stinson any more during the whole contract. I went across home that night, and bad weather prevented my using my solar compass for several days during the last of April.

Q. How many claims did you survey that first day?

A. I think eight.

Q. In April of what year?

A. 1854. You will find it on the plats. The date of the subdivision.

Q. Are you able to tell what these eight claims were from anything in your possession?

A. No, sir; I don't know the names of the men that filed on them.

Q. No; but the description of the land?

A. There seemed to be a crowd making these shanties that day, but who they were for I didn't inquire.

Q. Are you able to tell from anything in your possession the description of the lands that you surveyed that first day?

A. Sections thirty-six and twenty-five; the line between twenty-five and twenty-six. I ran up the lines of these two sections, twenty-five and thirty-six, and ran north another mile, I think.

Q. What town and range?

A. Town 49, range 14.

Q. Well, now, as to whether you heard Stinson giving any directions to these men, or any of them?

A. It looked as though he was very active around talking with them.

Q. What is the fact, Mr. Stuntz, as to whether or not it was commonly reported at that time that Stinson was taking up claims in fraud of the Government?

A. Well, that was the general report among the people there.
152 Q. You say that was the general report?
A. Yes, sir. That he was figuring on getting those lands there in that township.

By Mr. SANBORN:

Q. Mr. Stuntz, what sections did you say they were?
A. Thirty-six and twenty-five and part of twenty-four.
Q. It is possible that you have miscalled these sections and that the sections were twenty-six and thirty-five?
A. I ran the line north between twenty-five and twenty-six. The line on the east side had been run previous to this, and I commenced with that tier of sections and waited until the snow got off so I could run the balance of the boundary.

By Mr. FLANDERS:

Q. You are, of course, speaking from memory of the descriptions and your survey?
A. Memory only. I have not had occasion to refer to it for forty years.

Cross-examination by Mr. BASHFORD:

Q. You say that you heard some talk up there that Stinson was trying to get these lands by fraud?
A. Yes, afterwards; in the summer.
Q. You heard this same talk about other parties, didn't you?
A. Yes, sir.
Q. But you don't know of any fraud being perpetrated upon the Government?
A. No, sir; I did not know of any.
Q. And you didn't suspect any?
A. No, sir; I didn't suspect any.
Q. So far as that crowd was concerned everything was straight and honest, so far as you know?
A. Yes, sir.
Q. Had you known of any fraud you would have reported it to the Government, would you not?
A. Under my oath I would have had to.
Q. You never made a survey in your life, of that kind, that you didn't hear more or less talk on part of the claimants, if there was any contest?
A. Very seldom as much talk as on this occasion.
Q. On the day you adjourned the survey to prevent a riot
153 there were charges of fraud made back and forth by different parties about jumping claims, and so on, were there not?
A. No; only that they didn't believe that the law would sustain me in making a town site, and as they were armed and threatened blood, I thought best to let them cool off—play McKinley on them a little.

By Mr. SANBORN:

Q. Did you hear about some contests that were made in which fraud was charged?
A. Yes; later in the season.
Q. You remember that, do you? Do you remember the contest of A. B. Burbank? You remember Burbank, don't you? He lived over in Superior for quite a long time. Ambrose B. Burbank?

A. No; I don't remember about that.
Q. Do you remember a contest by one Gouge?
A. No; I don't know the man.
Q. Do you remember William T. Casto, a man from Kentucky, who was afterwards killed in a duel down in Kentucky; do you remember that? He came up there and preempted or jumped a claim on the northwest quarter of 6–48–41. Do you remember anything about that?
A. That town was not surveyed until later in the season.
Q. The question is, do you remember Casto?
A. No; I don't remember that. I was busy in my profession.
Q. Do you remember a man by the name of Sexton Lyon? He contested the claim of John Johnson?
A. These are all strange to me.
Q. Do you remember a man by the name of John T. Morgan?
A. John Morgan. Yes; but he never told me anything about that.
Q. Did you know Louis Richford?
A. Yes; I met him.
Q. Did you hear anything about a contest he had?
A. As I told you before I paid no attention to these things.
Q. I am only asking if you heard charges of fraud in these contests among the claimants?
A. I was not present at any contests and don't remember.
Q. The question is what you heard?
A. I may have heard about it, but I can't fix the names, because I was not acquainted with these men.
Q. Did you hear that there were contests made on the ground that somebody was making fraudulent entries?
A. Yes.
Q. And that contests were made in the land office for that reason; do you remember whether you heard that?
A. Yes; but I can not identify any one contest, except the general report that was talked all among my acquaintances.
154 Q. You said something about running the State line between Minnesota and Wisconsin.
A. Yes, sir.
Q. When did you do that?
A. In 1852.
Q. Where did you run it?
A. From the first rapid in the St. Louis River above Fond du Lac due south to St. Croix River—42 miles.
Q. You mean just the land boundary?
A. Yes, sir.

Redirect examination by Mr. FLANDERS:

Q. We meant to ask you your age?
A. I will be seventy-eight (78) next December.
(The reading of the testimony to the witness and signature waived.)

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Charles L. Spencer, a United States commissioner for the district of Minnesota, do hereby certify that at the times and place hereinbefore

mentioned the following-named witnesses, to wit, Israel Johnson, Lorens Johnson, John Lonquist, Gustav Johnson, David Carlton, Peter M. Peterson, and George R. Stuntz, summoned to testify on behalf of the United States in an examination before me in a case pending in the United States circuit court for the western district of Wisconsin, entitled The United States of America vs. James Stinson et al., appeared before me, and each of said witnesses before any question was put to him was by me duly sworn in said cause to testify to the truth, the whole truth, and nothing but the truth; that the testimony of said witnesses was in my presence taken down in shorthand by J. M. Dickey, and that the foregoing pages numbered from 1 to 69, both inclusive, contains a full, true, and correct transcript of the testimony of the witnesses above named taken upon said examination.

In testimony whereof I have hereunto set my official signature as United States commissioner aforesaid, at my office, in the city of St. Paul, in said district, this 12th day of March, A. D. 1898.

CHARLES L. SPENCER,
United States Commissioner for the District of Minnesota.

(Endorsed:) No. , United States circuit court, western district of Wisconsin. United States of America vs. James Stinson et al. Testimony for plaintiff taken March 9th & 10th, 1898, before Charles L. Spencer, U. S. com'r district of Minnesota. Filed Mar. 15, 1898. F. W. Oakley, clerk.

155 *Deposition of John S. Moffatt.*

Afterwards, to wit, March 16, 1898, filed deposition of John S. Moffat, as follows:

United States circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON ET AL., DEFENDANTS.

The deposition of John S. Moffat, a witness on behalf of the complainant, pursuant to order of the above-named court of the 4th day of February, 1896, and to stipulation between the parties duly made and entered into.

Appearances: James G. Flanders, esq., for the complainant; R. M. Bashford, esq., for defendants.

HUDSON, WIS., *Mar. 10th, 1898.*

It is stipulated by and between parties hereto that the reading of the deposition by the witness, and the signatore of the same by the witness, are waived, and that the commissioner may in his certificate certify to the appearance of the witness and that he was duly sworn, and that any and all objections to the form of the certificate containing these statements is hereby waived. The stipulation in respect to the objection to testimony already made is to apply for the testimony of this witness so that objections need not be entered to the questions as propounded by complainant's solicitor.

157 JOHN S. MOFFAT, being duly sworn and examined as a witness on behalf of the complainant, testifies as follows:

By Mr. FLANDERS:

Q. May I ask your age, Judge?
A. I am in my 84th year.
Q. Your residence is Hudson, Wis.?
A. Yes, sir.
Q. And how long has this been your place of residence?
A. Well, for over forty years—forty-two years.
Q. What year did you come here?
A. 1854.
Q. What is the fact as to whether or not you had any connection with the register's office here?
A. I was in the register office; yes.
Q. When?
A. In 1854–5–6–7.
Q. In what position?
A. I was a clerk.
Q. Did you see the defendant, James Stinson, here at that time?
A. Yes, sir.
Q. Who was here with him?
A. I don't know their names; I don't recollect their names; they were foreigners.
Q. How many of them?
A. Well, think there were at one time two, and at another time three or four.
Q. What year was it you saw those foreigners here with him?
A. 1855.
Q. What did Stinson do at that time?
A. Well, I don't know; I couldn't tell what he did.
Q. Well, as to paying any money to the register's office?
A. Well, I couldn't say positively that he paid any money. After the proof was taken, made up, they went down into the receiver's office, and after they came back up into the register's office again they had conversation together, and I saw Mr. Stinson handing to these parties something—what it was, of course, I couldn't state. I know what I thought it was.
Q. Well, what did you think it was?
A. Well, I thought it was money, but I could not state positively it was money because I was not near enough to them. I was at my desk, you know, and they were in the body of the office. I was behind the counter. There was a counter, and my desk was on the counter, and I was behind the counter at my desk. And they conversed together, and I saw Mr. Stimson handing them something which I supposed, of course, was money, but still I wouldn't swear it was.
Q. Was he handing something to each of them, apparently?
A. Yes, sir; handing something to each of them.
Q. Did you see Mr. Stinson with these foreigners more than once?
A. I think I saw them twice here at the office, at two different times.

158 Q. Do you mean by that you saw two different parties of foreigners, or did you see the same party of foreigners twice?

A. I think at one time—I couldn't say whether it was the first or second time—that there were two of them, and at another time three or four of them.

Q. Now, what I want to know is whether you saw Stinson with these two more than once?

A. No; they were different men at two different times.

Q. But during that same visit, or that same day, did you see him with them more than once?

A. Well, yes; I saw him with them more than once. They were there for considerable time. Of course it took time to draw up the proof, and they were there for some hours in the office.

Q. Who drew up the proof?

A. My impression is that I did it. I would not swear to it positively, but I think I did; I think I drew the proof myself.

Q. Did you have yourself any talk with Stinson?

A. No, sir.

Q. Who was the receiver at that time?

A. Dr. Otis Hoyt.

Q. And who was the register?

A. J. O. Henning.

Q. These foreigners that were with Mr. Stinson, could you tell what countrymen they were?

A. I rather think they were Norwegians; still I would not be positive whether they were Norwegians or Canadian French—they were foreigners, at any rate.

Q. Might it be possible that they were Swedes?

A. It might have been that they were Swedes. I rather think they were, when you come to mention the name; I rather think they were Swedes.

Q. Do you remember the names of any of them?

A. No, sir; can't call any of them by name at all.

Q. Do you think you would remember any of the names if they were mentioned to you?

A. I think I would; yes.

Q. Israel Johnson, or Loreng Johnson, or Andrew Svenson?

A. Those names sound familiar to me.

Q. Or Peter Peterson, Peter Magnus Peterson?

A. I recollect Peterson; I recollect the name of Peterson, but of course I couldn't state that was the name of the men that were there—or those names.

Q. Do you remember a man by the name of Wallmark?

A. Yes, sir; I recollect that name, too.

Q. And Westmoreland?

A. I can't recall that name.

159 Cross-examination by Mr. BASHFORD:

Q. You were in that office for four years?

A. Yes, sir.

Q. And you made out most of the affidavits when applications came in for preemption?

A. Yes, sir.

Q. And you must have made out perhaps a hundred or more during that time?

A. Yes, sir.

Q. And you can't undertake to state to-night what affidavits you made in 1854, or what affidavits you made in 1855, or any one year, can you?

A. I didn't make any in 1854, I don't think—I don't recollect; of course, I can recollect making affidavits in 1855, '56, and '57.

Q. You can't tell the names of those you made out any one year, and distinguish them from another year, can you?

A. No, sir.

Q. And when these names were called off to you, you simply recollect that those are the names of persons who made entries of land here while you were in that office?

A. Yes, sir; that is all.

Q. And you can't say whether it was in '54 or '55 or '56 or '57?

A. Well, of course, I know that this transaction that we are speaking of here occurred in '55.

Q. But you can't tell that those names were the names of the men?

A. No; I can't recollect the names.

Q. And you can't recollect the names of any of the persons who were with Mr. Stinson?

A. No, sir.

Q. What is your best recollection as to the nationality of those people—that they were Canadian French?

A. Well, since the name has been mentioned here of Swedes, I think they were Swedes.

Q. Your first impression was that they were Canadian French?

A. Well, when you were here last evening the impression I had in my mind then was that they were Canadian Frenchmen, but, since the thing has been brought to mind this evening, I think they were Swedes.

Q. What steps were taken when a claim was made for land in the office here?

A. Well, the first step would be the applications for the preemption; the application would be filed. That would be the first step.

Q. In what office would that be filed?

A. That would be filed in the register's office.

Q. What would be the next step?

A. The next step would be they would come to the office and prove up their claim. The law repuired, you know, that they should occupy the land, and they would come and make the proof that they had occupied the land.

Q. That was by affidavit?

A. That was by affidavit.

160 Q. And those affidavits you made out usually?

A. My impression is now that I did; I couldn't say positively that I did it, but I am quite positive that I drew the affidavits at the time.

Q. Well, now, was there an interpreter along to interpret for you when you made out the affidavits?

A. Yes, sir; there was an interpreter.
Q. And you explained to them fully the contents of the affidavits?
A. After it was drawn—yes.
Q. Always?
A. Always.
Q. And you never took an affidavit without explaining fully the contents?
A. No, sir.
Q. And did the interpreter then make explanation to the parties who were to sign affidavits?
A. Yes, sir; the interpreter would explain; I would read and the interpreter explain to the foreigner.
Q. Who signed the affidavit?
A. Who signed the affidavit.
Q. And then the affidavit was sworn to before you?
A. The affidavit was sworn to before me. No; I think the affidavit was sworn to before Mr. Gibson; I was not authorized—I was not an officer authorized to take affidavits—but Mr. Gibson was a notary public and I think the affidavits were made before him.
Q. After you had prepared them?
A. After I had prepared them and read them over to them and explained them.
Q. What was done with the affidavit after it was signed?
A. Well, the affidavits were forwarded to the Departments, you know, at Washington.
Q. They were left, were they not, with the register or receiver—which?
A. They were left with the register; the register forwarded them. He made up his reports—returns—and they were forwarded to the Department.
Q. What paper did the register give the applicant when the affidavit was filed?
A. The register gave him a certificate; the register made out a certificate, and with that they went to the receiver and paid the money.
Q. And they would take their certificate then and come to your office to make payment of the money?
A. No; they would go to the receiver's office to pay the money.
Q. You were in the register's office?
A. Yes, sir.
Q. Where was the receiver's office?
A. The receiver's office was in the same building, in the first story; we were in the second story.
Q. So that you would not see them make payment to the receiver?
A. No; I did not see them make payments to the receiver.

Q. It was after they had received this certificate from the
161 receivers, showing that they had made the payment, that you saw them in your office with Mr. Stinson?

A. Yes, sir.
Q. And you did not see them with Mr. Stinson until after that had been issued?
A. I couldn't say that; I think that I saw them before I saw Mr. Stinson in the office, while we were drawing up the papers.

Q. You saw them, but you didn't see Mr. Stinson there?

A. I think I saw him; Mr. Stinson was in the office; yes, he was in the office while we were drawing up the papers.

Q. The first time you drew up two affidavits?

A. I don't know whether it was the first or second time; there was one time two came, and at another time there were three or four, four my impression is, it was four.

Q. And about how far apart?

A. Well, that I couldn't tell.

Q. Some weeks or months?

A. Well, it was some little time, but I couldn't tell how long.

Q. And you can't tell the year when either one of these transactions took place?

A. Well, in '55 this transaction took place.

Q. How many men were there then?

A. Well, both sets were there, it was in '55, both I think.

Q. At the time you saw Stinson pay over something as you thought in the form of money, had some further papers been made out by Mr. Gibson?

A. Yes; I don't know whether Mr. Gibson made out the papers or not; the papers were acknowledged before Mr. Gibson; whether he made them out himself or not I couldn't state, but the acknowledgment was taken before Mr. Gibson.

Q. Did you see what the papers were?

A. Well, I couldn't positively state that I saw those papers, the deeds transferring the land to Mr. Stinson; I couldn't say postively that I saw the papers, still the impression in my mind is that I did and it is very possible that I was one of the witnesses, but I would not testify positively to that.

Q. You understood that these parties were taking a conveyance of the land which they had acquired to Mr. Stinson?

A. Yes, sir.

Q. And that he was paying them for it?

A. Yes, sir; I thought he was paying them for it; that is what I understood; that is what I thought at any rate at the time.

Q. There was nothing improper in that, was there?

A. No, that is perfectly legitimate, I suppose. They had a right after they had entered the land and paid for it to sell it if they wanted to.

Q. Now, to make out the two affidavits and to carry out that transaction, it wouldn't require very many hours, would it?

A. Oh, no; probably an hour or so.

162 Q. And you saw Mr. Stinson there during that time, but you can't say how frequently you saw or where you saw him?

A. Well, I didn't see him anywhere but in the office.

Q. This transpired over forty years ago and you had a great many transactions of that kind; you can't undertake to state with any great accuracy just what took place at this time, can you?

A. Well, my mind on this matter is quite distinct. The reason why is that my memory has been refreshed in regard to it and that the matter was talked up considerably at the time.

Q. Was there a contest about it at the time?

A. No, no contest, but it was a little unusal, you know, and the matter was talked up some in the office at the time. It was a little unusual transaction.

Q. You don't mean to say it was unusual for parties to prove up and sell their claims?

A. Well, it was not a common thing at the office; the parties that proved up were generally—they generally proved up and took the land themselves without making a transfer of it immediately, and that transaction having taken place at that time impressed itself upon my mind more firmly than it would ordinarily have, a transaction of simply proving up a claim.

Q. Were you at that time in the employ of the United States Government?

A. I was simply employed by the register, I was a clerk for the register; the register was the United States officer.

Q. I think you said you could not state what month it was that the two people came there?

A. No, I could not state the month.

Q. Nor the month when three or four came?

A. No, I couldn't state the month.

Q. And you can't give the names?

A. Nor I couldn't give their names.

Q. But you think you saw Mr. Stinson here with those two parties at different times?

A. Yes, I think so; yes, I am quite positive I did.

Q. And was this Mr. James Stinson or John Stinson?

A. I think the name was James.

Q. Have you a recollection as to who the interpreter was?

A. No, I don't know whether I heard his name at all.

Redirect examination by Mr. FLANDERS.

Q. Who was in the office with you?

A. Mr. Gibson was in the office and Mr. Henning; Mr. Henning was register; they were doing a banking business.

Q. Mr. Henning, Mr. Gibson, and yourself were in the office
163 together?

A. Well, yes, we were in the office together; that is, we were the persons who carried on the business in the office.

Q. Mr. Henning is dead?

A. Yes, sir.

Q. You told me the name of the receiver, but I have los' it.

A. Mr. Otis Hoyt.

Q. Is he living or dead?

A. He is dead.

Q. Who was in his office?

A. Charley Dexter.

Q. Where is he?

A. That I don't know.

Q. Is there anybody here who would know?

A. I can't tell that; I don't know.

By Mr. BASHFORD.

Q. Mr. Gibson was not connected at all with the office of register?

A. No, he was not connected with the land office porticularly; no, he and Mr. Henning were engaged in private banking.

Q. And he was a notary public?

A. And he was a notary public, Mr. Gibson.

Q. And he frequently took acknowledgments there at his desk?

A. Yes, sir.

Q. And had he not been register in the land office before that?

A. No, I think not; I would not be positive about that.

Q. It was a common thing for Mr. Gibson to take acknowledgments and make out papers in that office?

A. Yes, sir.

Q. There was nothing unusual about that?

A. Nothing unusual about that; it was quite a common thing.

Q. And nothing unusual to see money paid over there?

A. No.

Q. By different parties?

A. No, that was a common thing. Well, they frequently paid money.

Q. You were not here until 1854?

A. 1854; September, 1854, I came here.

Q. And Dr. Hoyt was then the register?

A. Dr. Hoyt was receiver.

Q. And Mr. Henning register?

A. Yes, sir.

Q. And Henning succeeded Gibson?

A. Henning and Gibson were in the office.

Q. Gibson had been receiver immediately before Henning was?

A. I couldn't say; I don't know whether he was or not.

Q. You took no part in any transaction or in any conversation between Stinson and these foreigners that you speak of?

A. No, sir.

Q. And don't know anything about the transaction or conversation that took place between them?

A. No, sir; I don't know what the conversation between them was; they were in the body of the office, you know, and conversed
164 together, but what their conversation was I don't know; I didn't pay any attention to that. I saw them talking and I saw Mr. Stinson hand over something to him which I supposed was money; of course, I wouldn't swear it was money, because I was not near enough to see just what it was.

Q. And Mr. Stinson seemed to be talking with these Swedes, as you call them, himself?

A. Yes, sir.

Q. At any rate, Mr. Stinson was talking with the parties, the foreigners whom you saw there at that time?

A. Yes, sir.

STATE OF WISCONSIN, *St. Croix County, ss.*

I, John W. Bashford, court commissioner in and for said county, do hereby certify that the above deposition of John S. Moffat was taken before me at his residence in the city of Hudson, in said county, on the 10th day of March, 1898, at 7 o'clock in the afternoon, at the request of parties; that James G. Flanders, esq., appeared for the complainant, and R. M. Bashford, esq., appeared for the defendants; that said deposition was taken at the request of complainant, upon verbal interrogatories; that it was taken in shorthand and reduced to longhand by C. A. Cross, official court reporter for the eighth judicial circuit for the State of Wisconsin, in my presence and under my direction; that it was taken to be used in an action wherein The United States of America is complainant and James Stinson et al. are defendants, now pending in the United States circuit court for the western district of Wisconsin, pursuant to an order of said court made on the 4th day of February, 1896, and to stipulation of the parties duly made and entered into, which said stipulation appears on the first page of said deposition; that said deponent, John S. Moffat, before examination was duly sworn to tell the truth, the whole truth, and nothing but the truth, and that the reading of said deposition by said deponent and the signing of the same by him was waived by said parties.

JOHN W. BASHFORD,
Court Commissioner in and for St. Croix County, Wisconsin.

(Endorsed:) Chan. 279 B. U. S. Circuit Court, West. Dist. Wis. United States v. James Stinson & Henry J. Stinson. Deposition of John S. Moffat. Filed Mar. 16, 1898. F. W. Oakley, clerk.

Afterwards, to-wit, April 30, 1898, filed order allowing counsel for complainant to withdraw deposition to M. S. Gibson, as follows:

165 *Order allowing withdrawal of deposition of M. S. Gibson, filed April 30, 1898.*

U. S. circuit court, western district of Wisconsin.

THE UNITED STATES *vs.* JAMES STINSON. } In equity.

On the application of counsel for complainants it is ordered that James G. Flanders, counsel for complainants, may withdraw from the files in this cause the deposition of Moses G. Gibson, taken on behalf of the complainants, taken before C. S. Bundy, April 1, 1896, and may retain the same for twenty days from this date.

Dated April 30, 1898.

By the Court.

R. BUNN, *Dist. Judge.*

(Endorsed:) Chan. 279 B. U. S. circuit court, west. dist. of Wis. The United States *vs.* James Stinson et al. Order for withdrawing deposition. Filed April 30th, 1898. F. W. Oakley, clerk.

Notice for production of papers, filed June 8, 1898.

Afterwards, to wit, June 8, 1898, filed notice and affidavit for production of papers, as follows:

United States of America, circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY STINSON, DEFENDANTS,

Please take notice that on the 8th day of June, 1898, at ten o'clock in the forenoon, the defendants will apply to the Honorable Romanzo Bunn, judge of said court, for an order directing the complainants to produce, within the time to be limited in the said order, copies of all the papers relating to the contests mentioned in the affidavit attached hereto, and that the said defendants have leave to inspect the same, and for such further or other order as shall be just.

Dated June 3rd, 1898.

SPOONER, SANBORN & SPOONER,
Solicitors for defendants.

166 *Affidavit of A. L. Sanborn, filed June 8, 1898.*

United States of America, circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY STINSON, DEFENDANTS.

WESTERN DISTRICT, *ss:*

A. L. Sanborn, being duly sworn, says that he is one of the solicitors for the defendants in this cause and that this affidavit is made on their behalf for the purpose of obtaining certain documents or copies thereof in respect to certain contests upon the preemptions in question in this suit. Deponent says that it is charged in the bill that the defendant, James Stinson, purchased fourteen (14) quarter sections of land from the preemptors thereon and that the preemption entries were fraudulent in that the said James Stinson procured the same to be made, and that they were made for his benefit. That it appears from the records of the General Land Office of the complainants at Washington that nine of said fourteen entries were contested by various persons in 1855, and deponent states that the said contests were made upon substantially the same grounds as those alleged in the bill herein, and that the Government of the United States had full and complete notice as early as the year 1855 of all the claims of fraud now made by it as a reason for setting aside the patents issued to the said preemptors upon said lands. Deponent states that the following is the name of the preemptor, the description of the land, the date of the declaratory statement, the date of final proof,

the name of the contestant, and the date of the filing by the contestant in each of said cases, to wit:

John Johnson, N. W. ¼ sec. 26, T. 49, R. 14, filed declaratory statement Oct. 24, 1854; proved up Oct. 24, 1854; contested by Saxton Lyon, who filed Dec. 14, 1855.

Martin Larson, N. E. ¼ sec. 6, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 1, 1855; contested by Peter Bushman, who filed Dec. 6, 1855.

Aaron Peterson, N. W. ¼ sec. 5, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 1, 1855; contested by Leander Vevance, who filed Dec. 11, 1855.

Gustav Johnson, lots 1, 2, & 3, sec. 1, T. 48, R. 14, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by Ambrose B. Burbank, who filed August 6, 1855.

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John Johnson, N. W. ¼ sec. 1, T. 48, R. 14, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by John T. Morgan, who filed Dec. 20, 1855.

Otto Wallmark, N. W. ¼ of N. E. ¼ & lots 7, 8, & 9, sec. 1, T. 48, R. 14, filed declaratory strtement Oct. 24, 1854; proved up June 22, 1855; contested by Ch. H. De Graff, who filed Dec. 22, 1855.

Ola Westerland, N. E. ¼ sec. 4, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by Louis Rosheford, who filed Dec. 28, 1855.

Andrew Wallmark, N. W. ¼ sec. 4, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by Charles Frazier, who filed Dec. 10, 1855.

Israel Johnson, N. E. ¼ sec. 5, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by Urgell Gouge, who filed Dec. 10, 1855.

Deponent further says that he is informed that said contests were dismissed by the Commissioner of the General Land Office or other land officer of the United States, and that the records in respect to each of said contests are on file in said General Land Office, and are material evidence for the defendants in this suit, and without said evidence defendants can not safely proceed to a hearing of this cause.

Whereupon deponent prays that an order be made herein that the complainants shall produce copies of all such proceedings in respect to the contests of said preemptions, and that the same may be filed in this court, and that the defendants may have inspection thereof.

A. S. SANBORN.

Subscribed and sworn to before me this 3rd day of June, A. D. 1898.

CARL S. JEFFERSON,
Notary Public, Dane Co., Wis.

(Endorsed:) Chan. 279 B. Original. Circuit court of the United States, western district of Wisconsin. The United States of America, complts. *vs.* James Stinson and Henry Stinson, defts. Notice and affidavit. Received copy of within June 4, 1898. James G. Flanders, sol'r for complts. Filed June 8, 1898. F. W. Oakley, clerk.

Afterwards, to wit, June 13, 1898, filed order to produce papers, as follows:

168 *Order on complainant to file papers, filed June 13, 1898.*

United States of America, circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY STINSON, DEFENDANTS.

On this day the application of the defendants for an order directing the complainants to produce copies of papers relating to certain preemption contests came on to be heard upon the record herein and the affidavit of A. L. Sanborn on file, Spooner, Sanborn & Spooner appearing for the defendants, and H. E. Briggs, district attorney, for the complainants.

Whereupon it was ordered that the complainants within twenty days from this date file in said court a certified copy of all notices, letters, affidavits and papers of every kind relating to the following contests; that said copies be certified by the Commissioner of the General Land Office, and that the said Commissioner also certify that the copies so to be produced are all the papers in any way relating to the said contests and all of them; and upon the filing of said certified copies, the defendants may have inspection thereof and may offer the same in evidence if they should be so advised. Following is a description of the lands affected by the contests, the names of the preempters and contestants, and other facts in relation thereto:

John Johnson, N. W. ¼ sec. 26, T. 49, R. 14, filed declaratory statement Oct. 24, 1854; proved up Oct. 24, 1854; contested by Saxton Lyon, who filed Dec. 14, 1855.

Martin Larson, N. E. ¼ sec. 6, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 1, 1855; contested by Peter Bushman, who filed Dec. 6, 1855.

Aaron Peterson, N. W. ¼ sec. 5, T. 48, R. 13, filed declaratory statement Oct. 24, 1854; proved up June 1, 1855; contested by Leander Vevance, who filed Dec. 11, 1855.

Gustav Johnson, lots 1, 2, & 3, sec. 1, T. 48, R. 14, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by Ambrose B. Burbank, who filed Aug. 6, 1855.

John Johnson, N. W. ¼ sec. 1, T. 48, R. 14, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by John T. Morgan, who filed Dec. 20, 1855.

169 Otto Wallmark, N. W. ¼ of N. E. ¼ & lots 7, 8, & 9, sec. 1, T. 48, R. 14, filed declaratory statement Oct. 24, 1854; proved up June 22, 1855; contested by Ch. H. De Graff, who filed Dec. 22, 1855.

Ole Westerland, N. E. ¼, Sec. 4, T. 48, R. 13, filed declaratory statement Oct. 24, 1854, proved up June 22, 1855; contested by Louis Rosheford, who filed Dec. 28, 1855.

Andrew Wallmark, N. W. ¼, Sec. 48, R. 13, filed declaratory statement Oct. 24, 1854, proved up June 22, 1855; contested by Charles Frazier, who filed Dec. 10, 1855.

Israel Johnson, N. E. ¼, Sec. 5, T. 48, R. 13, filed declaratory statement Oct. 24, 1854, proved up June 22, 1855; contested by Urgell Gouge, who filed Dec. 10, 1855.

Dated June 13th, 1898.

By the court.

R. BUNN, *Judge.*

Stipulation extending time to take testimony, filed Oct. 22, 1898.

(Endorsed:) Chan. 279 B. Original Circuit court of the United States, western district of Wisconsin. The United States of America, complts., vs. James Stinson and Henry Stinson, defts. Order to produce papers. Filed Jun. 13, 1898. F. W. Oakley, clerk.

Afterwards, to wit, October 22, 1898, filed stipulation extending time to take testimony, as follows:

Circuit court of the United States, for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

It is stipulated that the time for the defendants to take their testimony in support of their answers is extended until the 15th day of November, 1898.

Dated October 18, 1898.

JAMES G. FLANDERS,
Special Assistant Attorney
for Complainant.

SPOONER, SANBORN & SPOONER,
Solrs. for Defts.

170 (Endorsed:) Chan. 279 B. Circuit court of the United States, west. district of Wisconsin. The United States of America, complt., vs. James Stinson and Henry J. Stinson, defts. Stipulation extending time to take testimony. Filed Oct. 22, 1898. F. W. Oakley, clerk.

Proof of service of motion to extend term probatory, filed Dec. 17, 1898.

Afterwards, to wit, December 17, 1898, filed proof of service of motion to extend term probatory, as follows:

WESTERN DISTRICT OF WISCONSIN, *ss:*

Charles P. Spooner, being duly sworn, on oath says that on the 12th day of December, 1898, he served the notice and affidavit hereto attached, in the case of the United States v. James Stinson and Henry J. Stinson,

upon James G. Flanders, at his office in the Pabst Building, Milwaukee, Wisconsin, by then and there delivering to and leaving with him, true copies of said affidavit and notice.

CHARLES P. SPOONER.

Subscribed and sworn to before me this 12th day of December, A. D. 1898.

[L. S.] CHARLES H. GEORGE,
Notary Public, Wisconsin.

Notice of motion, filed Dec. 17, 1898.

On same day, to wit, Dec. 17, 1898, filed notice and affidavit to extend term probatory, as follows:

Circuit court of the United States, for the western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Please take notice that on Saturday, the 17th day of December, 1898, at the United States court room in the city of Madison, in said district, at the opening of court on that day, or as soon thereafter as counsel can be heard, an application will be on behalf of the defendants to the court for an order extending the time for the defendants to take their
171 evidence in support of their answers until the 1st day of February next or such other time as the court may fix, and for a further order permitting said defendants to amend their answers by setting up the tax deed and tax proceedings mentioned in the affidavit of A. L. Sanborn hereto attached. Such application will be made upon the record in this cause and the affidavit of A. L. Sanbord attached hereto.

SPOONER, SANBORN & SPOONER,
P. M. BASHFORD,
Solicitors for Defendants.

To JAMES G. FLANDERS, Esq., *Solicitor for Complainant.*

Affidavit of A. L. Sanborn, filed Dec. 17, 1898.

WESTERN DISTRICT OF WISCONSIN, *ss:*

A. L. Sanborn, being duly sworn, says that he is one of the solicitors for the defendants in this suit and has attended personally to the taking of testimony on the part of the complainants. Deponent says that prior to the commencement of this suit a similar suit brought by the Government was pending against the defendant James Stinson, and in the answer in said suit there was pleaded and set up by way of defense the following, among other things:

"This respondent, further answering, says that each one of the said fourteen quarter sections of land described in the bill of complaint were sold in 1877 for the taxes, assessed thereon, in pursuance of the laws of the State of Wisconsin, to the county of Douglas in that State, in which

they were situated, and tax deeds executed therefor to said Douglas County, dated September second, 1880, and recorded on the same day, and this respondent purchased for a valuable consideration said titles from Douglas County and received deeds therefor, dated June twentieth, 1881, which were recorded in the proper office on the twenty-ninth day of June, 1881, and this respondent sets up the said titles based upon said tax sale as a paramount title to the said several tracts of land described in said bill."

Deponent says that by inadvertence in drawing the answers in the present case, the pleading of such defense was omitted and the attention of this deponent was not called to such omission until he entered upon the preparation of the defense, since the testimony on the part of the Government was closed, and not until some time in the month of September last. Deponent says that on the making of the tax deed on the lands covered by this suit to the said Douglas County, the said
172 county commenced a suit for the foreclosure of such tax deed under the provisions of sections 35 to 48 inclusive of chap. 22 of the laws of Wisconsin for the year 1859, and now found in the revised statutes of said State, sections 1197–1210 thereof, against said James Stinson and other persons, and that such proceedings were had in said suit that the said court, on or about the 1st day of January, 1881, the said court then and there having jurisdiction of the parties and subject-matter, rendered its decree in said suit in and by which the title of the said Stinson to all the lands here in suit and other lands was forever barred and foreclosed, and the said county was thereby decreed to be the full, legal, and equitable owner of said lands. That deponent is informed and verily believes it to be true that the said Stinson was unable to pay the taxes upon said lands, for the nonpayment of which said tax deed was given, and that the said tax deed was taken and said foreclosure proceedings had, the said Stinson not being able to redeem said land from the tax sale or to obtain title thereto before the foreclosure of said tax deed; and that after the making of said decree the said Stinson purchased the said lands and received a conveyance therefor, made and executed to him on the 20th day of June, 1881, as stated in said original answer. Deponent prays that the answers in this cause may be permitted to be amended so as to set up and plead the said tax title and the foreclosure thereof in favor of said county as a defense to this suit. Deponent further says that the complainant has had notice of the facts constituting such defense for more than eight years last past and that such notice was given to them by said original answer.

Deponent further says that the last testimony on the part of the complainant taken in this suit was taken some time during the summer of 1898 and was the testimony of both of said defendants. That said testimony was taken down by a stenographer and was by him written out and read over to the defendants and then signed by them, and that this was done about the first day of August last past. Such depositions have not been filed with the clerk of this court and no formal notice has been given to counsel for the defendants that the testimony of the complainant has been closed, although deponent was informed by James G. Flanders, who took said depositions on the part of the complainant, and who is their solicitor in this cause, that the case of the Government was thereby closed. Deponent further says that the time for taking testimony on the

part of the defendants was by stipulation extended until the 15th day of November, 1898. That shortly before the extension of such time expired, deponent was informed by said Flanders that he was about to withdraw from the cause as solicitor for complainant and was not in a position to grant any further extension of time for taking testimony. Depo-
173 nent says that the time for complainant to take their testimony has been repeatedly extended by the stipulation of solicitors for the defendants.

This deponent has been unable since said 1st day of August to give any time or attention to this cause on account of other business arrangements and pressing matters requiring his attention, and down to about the 7th day of November last, deponent confidently expected to be able to arrange a further extension of time for taking testimony on the part of defendants by agreement with the said Flanders, but which he was unable to do because of the contemplated withdrawal of said Flanders from said cause, which was entirely unexpected by deponent. Therefore deponent prays that the time for the defendants to take their evidence under the two answers may be extended until the 1st day of February next or such further time as the court may order.

A. L. SANBORN.

Subscribed and sworn to before me this 10th day of December, A. D. 1898.

E. RAY STEVENS,
Notary Public.

(Endorsed:) Chan. 279 B. Circuit court of the United States, western district of Wisconsin. United States of America, complainants, vs. James Stinson and Henry J. Stinson, defendants. Petition to extend time. Filed Dec. 17, 1898. F. W. Oakley, clerk.

Order of Dec. 17, 1898, extending time for defendants to take testimony.

On same day, to wit, December 17, 1898, filed order extending time to take testimony and postponing application to amend, as follows:

United States circuit court, western district of Wisconsin.

THE UNITED STATES)
vs.
JAMES STINSON ET AL.)

On the application of counsel for defendants, and the affidavit of A. L. Sanborn this day filed, it is ordered that the time in which the defendants shall take their evidence in support of their answers is hereby extended until the first day of March, 1899. Further ordered that that part of the application in respect to the amendment of the answer
174 is extended until the 2d day of January, 1899, at the same place, at the opening of court on that day or as soon thereafter as counsel can be heard.

Dated Dec. 17, 1898.

By the court.

R. BUNN, *Judge.*

(Endorsed:) 279 B. United States circuit court. The United States vs. James Stinson et als. Order extending time to take testimony and postponing application to amend. Filed Dec. 17, 1898. F. W. Oakley, clerk.

Order of March 2, 1899, further extension of time.

Afterwards, to wit, March 2, 1899, filed order extending term probatory, as follows:

Circuit court of the United States, for the western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Upon the application of counsel for the defendants, counsel for both parties appearing, it is

Ordered, That the time within which the defendants may take their evidence in defense is extended until the 15th day of April, 1899.

Dated March 1, 1899.

By the court.

R. BUNN, *Judge.*

(Endorsed:) 279 B. U. S. circuit court, western district of Wis. The United States vs. Jas. Stinson et al. Order extending time to April 15/99. Filed Mar. 2, 1899. F. W. Oakley, clerk.

Afterwards, to wit, April 4, 1899, filed depositions of James Stinson and Henry J. Stinson, as follows:

175 *Testimony of James Stinson.*

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

In the United States circuit court, for the western district of Wisconsin.

UNITED STATES OF AMERICA,
vs.
JAMES STINSON ET AL.

Be it remembered that heretofore, to wit, on the 19th day of May, A. D. 1898, before me, James Abbott, a notary public in and for the county of Cook, in the State of Illinois, personally appeared James Stinson and Henry J. Stinson as witnesses on behalf of the plaintiff in the above-entitled cause, who, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as hereinafter appears.

Mr. Flanders, appearing for plaintiff.

Mr. Sanborn, appearing for defendants.

JAMES STINSON, a witness produced on behalf of the complainant in the above-entitled cause, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows:

Direct examination by Mr. FLANDERS:

Q. Mr. Stinson, do you live in Chicago?
A. In Chicago; yes, sir.
Q. How long have you lived in Chicago?
A. I first came here in 1849.
Q. Has this been your residence ever since?
A. Off and on.
Q. How long have you lived here permanently, continuously?
A. Well, in residence since 1871 or 2.
Q. Where did you live before that?
A. At the hotels in Chicago and in St. Paul. I don't know whether you would call it living in Superior or not, but I have been in Superior.
Q. Did you live in St. Paul?
A. Yes, sir.
Q. When?
A. I was in St. Paul in 1852.
Q. How long did you live there?
A. Off and on, we will say, until 1857.
176 Q. What place did you call your home from 1852 to 1857?
A. Chicago has been my home as much as any place. The others I never had a residence in.
Q. State as to whether you spent most of your time from 1852 to 1857 in St. Paul?
A. I spent most of my time in St. Paul.
Q. Were you then unmarried?
A. Unmarried.
Q. Was it in 1871 or 2 that you married? You spoke of it being from that time on your home?
A. I had a residence here in 1871 or 2; I have forgotten which.
Q. Was that at the time you were married?
A. No.
Q. When was that?
A. I can't tell you.
Q. You can't tell?
A. No.
Q. Well, approximately?
A. I don't want to approximate.
Q. You will not approximate?
A. No; I don't know. I couldn't approximate.
Q. You can tell whether it was between 1850 and 60, can you not?
(Objected to by counsel for defendents as immaterial.)
A. I can not give it.
Q. As to whether it was before 1860 or after, can you state that?
A. I won't state it.
Q. You decline to state it?
A. What?
Q. It is because you refuse to state?

A. I don't remember, I don't remember, and I don't want to state it.

Q. Well, I ask you now whether it is because you refuse to state it, or because you are unable to state it?

(Objected to by counsel for defendants on the ground that the witness has already said he is unable to answer, and any further answer is immaterial.)

Mr. BASHFORD. I advise the witness that he is not required to answer the question.

Mr. FLANDERS. Of course, I suppose that the same stipulation that we had formerly applies here; that is, that any objections to the questions, except as to the form, may be made as though made upon the hearing.

Mr. BASHFORD. Objections may be made, certainly, as upon the hearing. A question was asked which we think is immaterial and which we think ought not to be pressed, and we shall take the liberty of advising the witness not to answer.

177 Mr. FLANDERS. It is not in the power of this commissioner to direct the witness against your instructions, certainly, but I am covering another point now. I will say that this stipulation is entered into that any and all objections to the form of the questions may be made upon the hearing, except as to their form, with the same force and effect as if made before the commissioner.

Q. Well, I will ask you now if you are acquainted with your codefendant, Henry J. Stinson?

A. I am; yes.

Q. He is your son, is he not?

A. He is my son.

Q. Now, will you state his age?

A. I can't tell you.

Q. You can't state it?

A. No; I don't know it.

Q. Well, approximately?

Mr. BASHFORD. We will admit that he is over thirty years old at the present time.

Mr. FLANDERS. Mr. Stinson, you have set up in your answer the execution of a deed to Henry J. Stinson of some or all of the property described in the complaint in this action. I ask you now what consideration, if any, you have received for that deed?

A. Have you the deed?

Q. I haven't the deed.

A. I have forgotten.

Q. You have forgotten?

A. Yes, sir.

Q. A little trifle of that kind you don't remember?

A. I don't remember; no.

Q. Do you remember how old you are?

A. Yes.

Q. Will you state that?

A. I am seventy years old the 10th of March last.

179 Q. And you wish to state before the commissioner that you have forgotten the consideration received for that deed?

A. Yes, sir.

Q. Did you swear to it in your answer?
A. I don't know that.
Q. Well, I will show you your answer. See whether you can remember that. I show you now this portion of your answer, beginning on page 24. I ask you to look at that and state whether or not the allegations in that answer refresh your recollection?
A. This statement in this is true.
Q. What was the consideration which you received for that deed?
A. I think it is stated here $1,460,000.
Q. What?
A. For the deed.
Q. Yes.
A. For the sum of $1,460,000.
Q. How did you receive it?
A. In mortgages and notes.
Q. Executed by whom?
A. Executed by Henry J. Stinson.
Q. Where are those notes and mortgages now?
A. Distributed in different parts of the country.
Q. Where are they?
A. Well, some in Minnesota, some in Canada, and some in Chicago.
Q. Who has them?
A. Different banks.
Q. What banks?
A. The First National of Chicago.
Q. How much has the First National of Chicago?
A. I can't tell you.
Q. You can't tell?
A. No.
Q. How does the First National Bank of Chicago happen to have any of them?
A. Given as security.
Q. Who gave it to them as security?
A. I did.
Q. When?
A. I can't tell you.
Q. For how much money?
A. I can't tell you. It was on the sliding scale.
Q. When did you give them as security?
A. I can't tell you. It was after this. I can not give you the date. It was after this occurred.
Q. Is your memory failing you?
A. I never had a very good memory.
Q. You are in ordinarily health, are you not?
A. Yes; very good health.
Q. What is the fact as to whether or not you transacted a large amount of business for a great many years?
A. I have.
Q. What is the fact as to whether or not you are a man of large wealth?
A. Supposed to.

Q. Upwards of a million?

A. Supposed. Wealth at present is very hard to get at.

180 Q. Do you keep any books of account?

A. They are kept for me.

Q. Who keeps them?

A. I have had different people.

Q. Who keeps them now?

A. I think Mr. James.

Q. Who?

A. Coplin James.

Q. Are your uncertain whether Coplin James keeps your books or not?

A. No; he is keeping them now.

Q. Where does he keep them?

A. He keeps them in the city.

Q. Where in the city?

A. At my office, 607 Tacoma Building.

Q. Of course he has an entry of all the transactions that concern your business?

A. Yes, sir.

Q. In the books?

A. Yes, sir.

Q. He keeps a regular set of books?

A. I suppose.

Q. You so understand it?

A. Yes, sir.

Q. You pay him for so doing?

A. Yes, sir.

Q. A journal and ledger and daybook and cashbook?

A. Yes, sir.

Q. You can ascertain from him exactly how much these notes were pledged for, and when and to whom, can you not?

A. I don't know.

Q. What do you think about it?

A. I suppose it could be ascertained, but I don't know that he could give it. It may be that even he could not give that, as it was done outside of him, and maybe the entries not kept.

Q. Is it not a fact that when you do things outside you report them to your bookkeeper?

A. Not always.

Q. Is not that your rule?

A. Not always.

Q. I did not ask you whether it was always the case. Is that your rule?

A. It is the rule in certain transactions.

Q. Is it not the rule in your business to report your transactions to your bookkeeper so your books will show the record of your business transactions?

A. Not always.

Q. Be good enough to answer that question, if you will, yes or no.

A. No.

Q. It is not your rule?

A. No. It is not my rule in all transations that are not necessary for him to know.

Q. Will you be good enough to ascertain from that bookkeeper and bring here to this commissioner, before this examination is completed, the details with reference to these loans to these different banks, when made, the names of the banks, the place in which they are engaged in business, the amount of each loan, and the time when the same will mature? What do you say as to whether you will or will not?

(Objected to by counsel for defendants as immaterial.)

181 Mr. SANBORN. The defendants will furnish an approximate statement showing the amount of the notes secured by mortgage from Henry J. Stinson to James Stinson that have been negotiated and as soon as possible the amount for which they are collateral, and where and approximately the dates when they were so placed. We will have that in shape to be attached to-day, and will vouch for the correctness of it.

Mr. FLANDERS. Now, Mr. Sanborn, have you any objection to stating the exact age of Henry J. Stinson?

Mr. SANBORN. He is thirty-three in June.

Mr. FLANDERS. Mr. Stinson, did you receive any money from Henry J. Stinson as the consideration for this deed?

A. I can not tell you how that was made up. I don't know how much actual money I was owing him at that time. How it was made up I couldn't tell you.

Q. I am not speaking about what you were owing him, but did he pay you any money at the time?

A. If so it was, as I said, in liquidation of other business. I do not remember any actual money having been paid.

Q. In liquidation of his services?

A. Yes, sir.

Q. The notes secured by mortgage aggregated as stated in your answer, I think, $1,460,000?

A. Yes, sir.

Q. Now, what has been the fact with reference to Henry J. Stinson as to whether he has lived with you?

A. He has lived with me.

Q. During all his life?

A. No. He is living with me now and has been for some time.

Q. How long a time has be been living with you?

A. I don't know.

Mr. SANBORN. Ten or fifteen years or more?

A. I don't know. I will not answer.

Mr. FLANDERS. I will ask you this: Is Henry J. Stinson a married man?

A. No, sir; he is not.

Q. Now, since he came to be twenty-one years of age has he been in any business?

A. He has been more or less connected with my business.

Q. But aside from that has he been in any business?

A. No.

Q. Whatever money he has had you have supplied him with, I suppose, since he came of age?

A. I can't say that fully.

Q. As far as you know?

A. Well, I don't know. It is mostly so. I can't say.

182 Q. Now, what has he done for you since he came to be twenty-one years of age? You say he has been more or less connected with your business. What do you mean by that?

A. It would require some looking up to find out. I don't know.

Q. It would require some looking up to find out?

A. Yes. I would have to look over and see. I can not recall it now.

Q. Can you remember anything he did for you?

A. He has been doing something for me all the time. What it is I can't say.

Q. Can you remember anything at all that he has done in and about your business since he came to be twenty-one years of age?

A. Yes, sir; I can recollect his doings, but I don't care about stating them.

Q. Why not.

A. I don't want to. To give a proper answer I would have to look up and see what it was. I don't recall, myself.

Q. I though you said you could recollect?

A. I recollect some things, but I can't recollect all. I could not give any lucid statement.

Q. I am not particular whether it is lucid or obtuse as long as you state what you recollect. Will you be good enough to do that?

A. He has been in the office tending to my affairs, and before that he was attending to affairs outside.

Q. Well, Mr. Stinson, is that as clear a recollection as you have of what he has done for you since he was twenty-one years of age?

A. Yes, sir.

Q. As a matter of fact he has not done anything for you except to frequent your office?

A. No; I say he has been doing things off and on all that time.

Q. Well, what has he done?

A. Different things.

Q. What one thing has he done since he was twenty-one years of age, for you or in or about your business? I wish you would minute, Mr. Notary, the fact of the lengths of time approximately elapsing between the questions and the answers.

A. I am not going to answer any more than I have, then.

Q. In other words, Mr. Stinson, you refuse to answer, do you?

A. I can not recall at the present time so as to give a correct statement of what he has done. I would have to look it up.

Q. I have not asked you to give a correct statement of what he has done.

A. I do not want to give an incorrect one.

Q. I ask you to tell any single thing that he has done for you in or about your business since he was twenty-one years of age. Will you answer that question or not?

A. He has done many things.

Q. Tell us one.

A. What have I answered there before?

Q. The notary will read it. (Testimony read.)

183 (One minute and fifty seconds elapsed before the witness answered.)

A. I have given you one, that he has been in the office attending to my business there. Before that he was attending to business in other respects, or in other affairs.

Q. Yes; but I am asking you what he has done in your office or elsewhere in and about your business or for you?

A. He has to a certain extent been performing the offices that I would if I had been attending the office myself.

Q. What offices?

A. My office, 607, at the present time, Tacoma Building. I had other business before that, and he was engaged in that.

Q. What has he done?

A. He is attending to my business.

Q. What has he done about your business?

A. It comes in as general business.

Q. Can you state any one thing that he has done for you, or in or about your business, since he was twenty-one years of age?

A. I don't recall any one thing particularly.

Q. He didn't keep your books, did he?

A. No; he had a certain supervision of them.

Q. What do you mean by supervision?

A. Maybe he knew what was going on in the books.

Q. He didn't open the office, did he, in the morning?

A. Sometimes.

Q. Sweep it out?

A. No, sir.

Q. Build the fire in it?

A. No, sir.

Q. Or close it up at night?

A. I suppose he has done that.

Q. You think he has done that?

A. Yes.

Q. What has he ever done for you outside of the office?

A. Oh, many things.

Q. Such as what?

A. I can't give you the particulars.

Q. Can't you remember one?

A. I can remember a good many.

Q. Tell them.

A. I don't want to tell them.

Q. You refuse to tell them?

A. I refuse to tell them. I have told you all that comes in under my general business.

Q. You say you remember them?

A. I can recall a good many things he has done, but I don't consider them worthy of note.

Q. I don't ask you whether you consider them worthy of note. I ask you to state them. It is not for you to say whether they are worthy of note.

A. I can't tell them.

Q. You just said you could.
A. I could tell some things.
Q. Tell them, then.
A. I won't.
184 Q. Why won't you?
A. Because it is not any matter in this suit.
Q. Would you take the advice of your counsel on that subject?
A. I might.
Q. And might not?
A. I might or might not.
Q. Just as it pleased you?
A. Just as it pleased me.
Q. Would you tell it if you were ordered by the court?
A. Possibly.
Q. But not certainly?
A. I don't know.
Q. You are a little uncertain about whether you would obey the court, are you?
A. The court has to be obeyed, I suppose.
Q. A little doubtful whether it has to be or not?
A. Oh, I suppose they have a good deal of power.
Q. You said in your answer that you allowed him $40,000 for his services?
A. Yes.
Q. Was that true?
A. Yes.
Q. It was figured up $40,000, was it?
A. Yes.
Q. You didn't keep any account of it in your office?
A. No; it was a lump sum.
Q. No account with him was kept in your office?
A. I think there was.
Q. That is, what money you let him have? (A pause of twenty seconds.) Do you wish to make any answer to that question?
A. What question?
Q. The one I put to you.
A. I don't remember.
Q. (Question read.)
A. I can't tell you; I don't remember.
Q. You can't tell?
A. I don't remember.
Q. Will you bring us here a statement of the account that was kept with him in your office?
A. I might do that.
Q. I know you might do it, but I ask you whether you will or not?
Mr. SANBORN. We will bring whatever there is.
Mr. FLANDERS. Mr. Sanborn states that whatever there is in the office on that subject will be brought. How many other people have you had in your employment in the office since he was twenty-one years of age?
A. Three.

Q. All the time?
A. At different times; one at one time, two most of the time.
Q. Two most of the time?
A. Two most of the time.
Q. Three part of the time?
A. No, I think not; possibly three. I can't tell you.
185 Q. Who have they been?
A. One is Mr. Johnson and Mr. Stewart and Coplin James.
Mr. STEWART. And Mr. Sloan.
A. And Mr. Sloan.
Mr. FLANDERS. Mr. Stewart is the gentleman now present?
A. Yes.
Q. Who partially, at least, helped you in the taking of depositions in St. Paul and Hudson, is he not?
A. I don't know.
Q. Well, he is the gentleman now present?
A. Mr. Stewart is present, yes.
Q. Will you be good enough to give his first name?
A. Edwin Stewart.
Q. How long has he been in your employment?
A. I can't tell you.
Q. Well, approximately.
A. Oh, some years.
Q. Ten or twelve years?
A. Something like that.
Q. Ever since your son became twenty-one years of age?
A. I don't know about that. That is twelve years. I suppose so; about that.
Q. What has been your business in those twelve years?
A. Looking after real estate.
Q. You have been looking after real estate?
A. Yes, sir.
Q. Your own real estate?
A. My own real estate.
Q. Situated where?
A. Situated in Canada, in Illinois, in Indiana, Minnesota, and Wisconsin.
Q. What have been Mr. Stewart's duties?
A. Various.
Q. You can remember those, can't you?
A. Different times they varied.
Q. Well, remember some of them.
A. He has been assisting when law was the subject of work. He has been looking after real estate. He has been assisting me in keeping the books at different times.
Q. Anything else?
A. Anything that would apply to business where I was engaged.
Q. A lawyer by profession?
A. Yes.
Q. Who is Coplin James?
A. Coplin James is a bookkeeper.

Q. How long has he been in your employment?
A. Some few years.
Q. Ten or twelve years?
A. Not so long as that.
Q. How long?
A. Maybe five.
Q. Five years. What have been his duties?
A. I can't say for certain. I am not sure, but we will suppose it is five. His duties are various, looking after, now it is bookkeeping and attending generally to what may turn up in my business.
186 Q. He keeps the books, does he?
A. He is keeping the books now.
Q. He keeps the office, too?
A. He is at the office.
Q. He is in charge of the books?
A. Partially.
Q. What do you mean by partially?
A. I mean he is away from there occasionally on other business.
Q. Is he not in charge of your books?
A. Yes, sir.
Q. And of the office?
A. To a certain extent, of the office. My son is in the office as well, and he is directing and taking my place to a certain extent in the office.
Q. You have told us all you know about your son?
A. As I told you, I can't tell you.
Q. If there is anything more you know about your son please give it to us.
A. Go on.
Q. I am asking you to give any more information about your son. He is the man I am interested in. Have you any further information you desire to give me about your son's occupation or employment?
A. I have told you that he has been assisting me in my general business.
Q. You have told that three or four times.
A. We will let it rest at that. I cannot recall now. I will have to get the items myself to tell you just exactly.
Q. You have not changed your mind about refusing to answer that question, have you?
A. I have told you that I couldn't give it to you correctly, and as I cannot give it to you correctly I would want to refresh my memory. I told you he was generally attending to my business when called on.
Q. You remember I asked you a definite question which you refused to answer about him.
A. That was to state one thing.
Q. Yes.
A. Yes.
Q. You have not changed your mind about that refusal, have you?
A. The refusal is simply that I could not answer you satisfactorily to myself what it was at the time. It was all comprised in his assisting in the general business.
Q. Yes; I have heard about that.

A. Let that stand, then.
Q. Yes. Now, getting back to Coplin James, did he have charge of the safe or vault?
A. Yes, sir.
Q. He knew the combination of it, I suppose?
A. I suppose so.
Q. Who is this other man that you had when you had three?
A. Quentin Johnson.
Q. What did he do?
A. He had charge of the office and the books.
Q. That was before James had?
A. That was before James.
187 Q. How long was Quentin Johnson in your employment?
A. I suppose upwards of twenty years.
Q. Now, Mr. Stinson, what was the highest salary you paid to any one of these three men?
A. I cannot tell you.
Mr. BASHFORD. That is objected to. I do not think that is competent.
Mr. FLANDERS. You cannot tell?
A. No.
Q. You can certainly point that out from your books?
A. Certainly.
Q. Will you be kind enough to do so and let us know before this examination is closed?
A. Yes, sir.
Q. Now, then, when you allowed your son $40,000 for these services, none of which you can remember, was there any sum stipulated per year in that?
A. I have forgotten how the account was made up exactly. I don't know.
Q. Was there any account made up?
A. There was a compiling; yes.
Q. Compiling?
A. Or I hardly know what you would call it. Well, maybe compiling would answer as well as anything.
Q. What was it compiled from?
A. From his duties, what he had performed at different times.
Q. Was it compiled from any writings?
A. No.
Q. Nor from any books?
A. No.
Q. And how long did that compilation take?
A. I can't tell you.
Q. How long were you at it? A month or a week or a day or an hour or a minute?
A. No one of those.
Q. No one of those?
A. You may say a month.
Q. It is not what I may say. I am asking what you say.
A. I can't tell you. The time is past and I don't know what time I took.

Q. You say it may have taken you a month?
A. Yes, sir.
Q. Or it may have taken a minute?
A. It may have taken more than a minute. A minute passes ve rapidly. It is a matter of some consideration.
Q. What is the nearest statement you can make as to how long a ti it did take?
A. Well, we will say a month.
Q. That is your best judgment, is it?
A. Yes, sir.
Q. No writings on either side were compared or taken under consi eration; is that right?
A. That is right.
Q. You didn't charge up against his valuable services any mon which you advanced to him?
A. It was a mental calculation.
Q. A mental calculation?
A. Yes.
188 Q. What did you calculate mentally?
A. The offices he had performed.
Q. The offices he had performed?
A. Yes.
Q. Was your memory of them more distinct in 1894 than it is no
A. Possibly.
Q. What do you think about it?
A. I think the chances are that it was better.
Q. It was better?
A. Yes, sir.
Q. As soon as you wound it up I suppose you forgot all about t things he did before 1894?
A. It has been my custom after getting through certain things throw them off.
Q. You forgot what he did for you before 1894 as soon as it w over?
A. No, sir; I had not forgotten, but I don't care about enumerati without being able to do it more to my satisfaction than I can now.
Q. You are not interested in satisfying me at all about it, are yo Mr. Stinson, I want to put the time down on each of these questions th you do not answer more promptly. (Thirty seconds elapses before t answer.)
A. I have given you all I have to say on that question. Just put t question in more definite form.
Q. Is it the form of the question you object to?
A. I don't know whether it is the form.
Q. I will put it to you as definitely as I can once more, and ask yo to state, in any manner or form that you wish, any one single thing th your son did for you, or in or about your business, from the time that h was twenty-one years of age down to the time that you allowed hi $40,000 for services.
A. I have no answer to make.
Q. Well, you say this was a mental compilation when you allowe him this $40,000. What did that mental compilation consist of?

A. In the enumeration of the matters that he performed for me during that time.

Q. Who enumerated them?

A. I did.

Q. You did?

A. Yes, sir.

Q. He didn't enumerate them at all, then?

A. No.

Q. He accepted your say so about it?

A. Yes, sir.

Q. Who first proposed that he should be allowed $40,000?

A. I don't know.

Q. Did you first propose it?

A. I couldn't say.

Q. What is your recollection about it?

A. I don't recollect.

Q. You are quite sure that you did the enumerating, however, and he did not?

A. Yes.

Q. Did you always enumerate the sums of money you had advanced to him?

A. No.

189 Q. You knew, then, how much money you had advanced to him, did you?

A. No.

Q. You didn't know?

A. No.

Q. You knew approximately, didn't you?

A. No.

Q. Didn't you know that it exceeded $25,000?

A. I didn't know.

Q. What?

A. I didn't know.

Q. Would you be willing to say that it didn't exceed $25,000?

A. Not knowing, I wouldn't say.

Q. You have no recollection as to whether it was $10,000 or $100,000 that you had advanced to him; is that correct?

A. I have stated that I didn't know.

Q. Is it true that you can't tell whether it was $10,000 or $100,000 that you advanced to him?

A. It is true that I can't tell what was advanced.

Q. Have you any objection to answering that question as it is framed?

A. I can't tell.

Q. It might have been $100,000 then?

A. No; I wouldn't say that. I say I cannot tell. It was a mental arrangement, a mental calculation on my part of the duties that he performed.

Q. Who suggested $40,000?

A. I can't tell you.

Q. Did you make any memorandum of it at the time?

A. No.

Q. Any writing signed by either of you?
A. No.
Q. Where was it that you spent this time figuring up the $40,000 in your mind?
A. At home.
Q. Who was present when you did it?
A. I don't know.
Q. Anybody present besides yourself and him?
A. When you perform a mental calculation do you want people present?
Q. I do sometimes, and I ask you whether or not there was anybody present.
A. I don't know. It was over a month, and it was given consideration a month. I don't know whether there was anybody present or not. I might be thinking of those things when they were present and when they were not.
Q. You didn't think of it together then?
A. No.
Q. You went off and separated and thought about it apart from each other; is that right?
A. I don't know.
Q. You don't know?
A. I have answered that question, I think.
Q. How did you arrive at the sum of $40,000?
A. I have told you that I arrived at that from figuring up what he had done for me.
Q. Figuring it up in your mind?
A. In my mind.
Q. When did you first state it to him?
190 A. At the beginning or at the end of the month, that you were going to allow him $40,000?
A. I cannot say.
Q. It may have been at the beginning of the month then?
A. I suppose it would hardly be at the beginning, when it took a month to do it. It would be more likely to be at the end of the month.
Q. Was it pretty hard work to figure that out?
A. Not very difficult.
Q. Not much strain on the mind?
A. No.
Q. Did anybody advise you to allow him any sum of money for his services?
A. I don't know.
Q. You don't know?
A. Is that what you wish to say, Mr. Stinson? (A pause of twenty seconds.) Please note the time it takes to answer this question.
A. I have answered it.
Q. I haven't heard you answer; what is it?
A. I said I didn't know.
Q. Is that what you wish to say, that you don't know whether you were advised to allow him for his services or not?
A. I don't recall any advice.

Q. Mr. Stinson, there was a suit against you by the United States previous to the one now pending and in relation to these same lands, was there not?

A. I believe so.

Q. And that according to your answer was dismissed for want of prosecution on the 24th day of February, 1894. That is correct, is it not?

A. So far as I know.

Q. It is in your answer at all events.

A. Yes, sir.

Q. And you made this deed to Henry J. Stinson on the 19th of March, 1894?

A. That may be.

Q. Twenty-three days afterwards?

A. Did you say that was February?

Q. Yes; February 24th.

A. I made it when?

Q. The 19th of March, 1894.

A. That is how many days?

Q. Twenty-three days, as I figure it.

A. I suppose that is correct.

Q. It is not quite correct to say that you took a month to settle up with Henry J., is it; it was about twenty-three days or less?

A. Some time in the month.

Q. Some time in that month between the dismissal of the suit and the making of the deed?

A. I suppose.

Q. You never thought of allowing him for his services until after that suit was dismissed, did you?

A. I suppose not.

Q. And as a matter of fact, Mr. Stinson, you made that settlement and put that in the deed under the advice of counsel, didn't you,
191 for the purpose of making what they call a bona fide transaction between you and your son?

A. I did that to perform or carry out what is stated in the answer.

Q. You made that settlement with him and put that amount in the deed to him under the advice of counsel, did you not?

A. Possibly. I don't know.

Q. Now, your son who was earning this $40,000 from the time he was twenty-one years of age of course knew about this former suit, didn't he?

A. I don't know.

Q. Didn't he help you about it?

A. No; not that I know.

Q. Wasn't that one of the things that he did that helped earn this $40,000?

A. No.

Q. He was in and about your office all the time?

A. Yes, sir.

Q. Living in your home part of the time?

A. Yes, sir.

Q. You talked with him often?
A. Tolerably so.
Q. You were on friendly terms?
A. Yes, sir.
Q. Quite friendly?
A. As sons are and fathers.
Q. You are not a secretive man at all?
A. I don't know about that.
Q. What do you think about it?
A. I don't think.
Q. You don't think you are?
A. Tolerably so; yes.
Q. But only tolerably?
A. I don't talk unnecessarily.
Q. No; but it is only tolerably?
A. I don't bother others with my business unnecessarily.
Q. You seek counsel from those whose counsel you value, of course?
A. Ordinarily. I like to get drops of wisdom from anybody.
Q. You thought your son's counsel would at least be honest, didn't you?
A. I don't know that I looked to him for counsel.
Q. Didn't you talk your business matters over with him at all?
A. Necessarily I had to consult him in my business.
Q. This suit of the United States against you threatened a large portion of your property, didn't it?
A. That didn't form much of the subject of conversation between us.
Q. Did that suit or not threaten a large portion of your property?
A. Evidently.
Q. Now, do you mean to say that you didn't talk that matter over with your son?
A. I may have talked it over with him.
Q. Don't you know you did?
A. I don't know. Incidentally it was mentioned, but I don't know that we ever had any serious conversation.
Q. I don't ask whether there was serious conversation or not.
A. No doubt it was talked about.
Q. No doubt it was talked about?
A. To a certain extent, but very little.
192 Q. He knew what the suit was about, didn't he?
A. Partially.
Q. He knew that the United States claimed that you had procured these lands to be entered by fraud, didn't he?
A. No; he didn't, and nobody else knew it, and it never was.
Q. (Question read.)
A. He may have heard of it.
Q. You told him so yourself, didn't you?
A. No.
Q. Didn't you tell him about this suit?
A. I doubt it.
Q. You doubt it?
A. Yes.

Q. When you talked with him didn't you tell him what the suit was about?

A. He got that information outside. I don't know that I talked with him.

Q. You said you did talk with him.

A. The suit was mentioned casually.

Q. When you talked with him casually about it didn't you tell him what the suit was about?

A. I don't remember.

Q. You don't remember that?

A. I don't remember it.

Q. Have you any doubt that your son knew while that suit was pending what it was about?

A. I think he had his own ideas about it.

Q. Have you any doubt that he knew what that suit was about while it was pending?

A. I don't know. I have a good deal of doubt about what he knows.

Q. You have a good deal of doubt about that?

A. About what he knows.

Q. You paid a man $40,000 for services to you in and about your business and still are doubtful about his knowing what this suit that threatened a large portion of your property was about?

A. Yes.

Q. Have you forgotten who your counsel were in that suit?

A. I may have consulted with Judge Dunlevy.

Q. Whom else did you counsel with about it?

A. I suppose I was in consultation with Mr. Sanborn.

Q. Mr. Bashford, too?

A. Mr. Bashford I didn't know at that time.

Q. He was not in the former suit?

A. I don't know, but I hadn't seen Mr. Bashford at that time.

Q. Who was it that you consulted about this transaction between you and your son by which you deeded this property to him? Was that Judge Dunlevy or Mr. Sanborn?

A. In all probability it was Judge Dunlevy.

Q. What did Judge Dunlevy advise you about it?

A. I can't tell you.

Q. Did he advise you that it was necessary for you to have some consideration in the services of your son in this deed?

A. I don't know.

193 (Objected to by counsel for defendant because it is incompetent to ask a witness the advice of his counsel, it being a privileged communication.)

Q. Was this advice of Dunlevy given to you before the deed and mortgage were executed?

Mr. BASHFORD. That is objected to as before, and I advise the witness not to answer.

Mr. FLANDERS. The same way with the other question?

Mr. BASHFORD. Yes.

Mr. FLANDERS. Who is Judge Dunlevy? Is he living now?

A. No; he is dead.

Q. Was he a Chicago lawyer?
A. He resided in Chicago.
Q. How long has he been dead?
A. About a year, I think.
Q. Did you know John Johnson in his lifetime?
A. What John Johnson?
Q. A Swede.
A. I know John Johnson; yes.
Q. Where did you know him?
A. I knew him in Minnesota.
Q. When?
A. I think possibly in 1854.
Q. Whereabouts in Minnesota did you know him?
A. I think in Chisago County, Minnesota.
Q. I think you said it was in 1854 that you knew him, did you not?
A. About that time; yes.
Q. Was he in your employment?
A. He was in the employment of what is called—not necessarily in my employment.
Q. I don't ask you whether he was necessarily in your employment or not. I ask you whether he was in your employment.
A. I hired him at some time about that time for others.
Q. For others?
A. And myself; yes.
Q. Then he was in your employment?
A. Yes; in this sense, that I was acting for others, and I employed him, and was interested in what was carrying on at that time.
Q. Those others were your father, were they not?
A. No, sir.
Q. Who were they?
A. Those others were the men that were about surveying or laying out the town of Superior.
Q. Who paid him?
A. He was paid from the funds of this association.
Q. Have you any objection to telling how he was paid?
A. I am under the impression that I paid him in part, and I
194 am under the impression that was paid in part by Mr. Newton and some others that were interested.
Q. You are under the impression that he was paid in part by Newton?
A. Yes, sir.
Q. Do you know anything about it?
A. I think that he was paid. If he was paid by me it was paid by this company.
Q. Didn't you do the paying?
A. Not necessarily.
Q. As a matter of fact, didn't you do it?
A. I did some of it.
Q. Didn't you as a matter of fact do all the paying to him at that time?
A. I don't know.
Q. You have forgotten that?

A. I think not, but I don't know. I can't say. He was working for this company when he was there, and the chances are that he was paid by them.

Q. What was this company that you are talking about?

A. It was an association. I hardly know how to describe the company to you.

Q. Why not?

A. I can't. The question is—there was an association of men securing land at the head of Lake Superior for a town site.

Q. You are a man of education, aren't you, Mr. Stinson?

A. Well, I don't know what you would call it.

Q. I am asking you what you call it.

A. Well, I am educated in a certain sense. I have never been through college, if you mean that.

Q. What do you mean by saying you are educated in a certain sense?

A. I have educated myself. I am a self-educated man to a certain extent.

Q. You can read and write the English language?

A. Tolerably well. I don't do much of it now. I do a good deal of reading. I don't do any writing.

Q. You can read and write and speak the English language?

A. Yes, sir.

Q. Had a good common school education?

A. No; I can't say I have had.

Q. Did you go through the common school?

A. No; I left school when I was a boy.

Q. How old?

A. Fourteen.

Q. You have been a man that has read more or less ever since?

A. Yes, sir.

Q. Now, when you say this was an association of men I ask you what it was.

A. I have told you that it was an association of men to make a town site.

195 Q. Do you mean that it was a partnership?

A. Well, at that time I don't know whether you would call it a partnership or not.

Q. I am asking whether you call it a partnership. You know what a partnership is, don't you?

A. Yes, sir. It was not a partnership in that sense. There had been no writings made, or anything of that kind. It all come in afterwards.

Q. It was not a corporation?

A. It was not a corporation.

Q. Every man for himself up there?

A. No. It was to a certain extent, and it was not. At one time it was. After that it was not.

Q. I am talking about the time when you hired John Johnson.

A. When I hired John Johnson—you are refreshing my memory—when I hired John Johnson I think the association had been formed.

Q. What was the object of the association?

A. To acquire property and make a town site.

Q. And every man acquired his own property?
A. No.
Q. Was it a partnership, then?
A. No.
Q. Was it a corporation, then?
Mr. SANBORN. They were tenants in common. There were twenty-seven people, and they owned it in undivided shares.
Mr. FLANDERS. Whatever you owned up there you owned yourself. You didn't own it in partnership with anybody else?
A. No; it was an association.
Q. If you bought an undivided interest it was your undivided interest, wasn't it?
A. Evidently if you owned it it was yours.
Mr. SANBORN. Did you have any title in your own name?
A. No.
Q. Now, you hired John Johnson, you say. The hiring was done by you?
A. Yes, sir.
Q. Where did you hire him?
A. In Chisago County.
Q. When?
A. About this time.
Q. Where is John Johnson now?
A. I understand he is dead.
Q. When did he die?
A. I can't tell you.
Q. Was it about the time of the beginning of the war?
A. I don't know.
Q. Is he the man that has been known as the first John Johnson in this litigation?
A. That is the one I mean.
Q. There was also a John Johnson who was called the second John Johnson?
A. I don't know.
196 Q. Did you and John Johnson together make any arrangement with any Swedes to go over to Superior?
A. No.
Q. You didn't?
A. No.
Q. Did any Swedes come over from Chisago County, Minnesota, to Douglas County, Wisconsin?
A. Yes, sir.
Q. And when?
A. About this time there were some.
Q. How did they happen to come?
A. To do work on this town site.
Q. Who invited them to come?
A. I invited them to come through and for the town site.
Q. You invited them to come?
A. Through and for the town site.
Q. I didn't ask you that.

A. I hired them for the town site.
Q. You invited them to come yourself, did you?
A. I did, John Johnson, and he brought the others.
Q. How many others?
A. I can't tell you, but it happened to be mentioned this morning. They say it was seven.
Q. There were fourteen, weren't there?
A. No.
Q. Seven now living?
A. No; there is seven now living, but there were—they didn't all go at one time.
Q. You mean there were seven in 1854?
A. Yes, sir.
Q. Now, you directed John Johnson to bring them over, did you?
A. Yes, sir; I told him where to bring them. I hired them to come to Superior.
Q. You directed him to hire them and bring them over to Superior?
A. Yes, sir.
Q. Weren't you yourself with him when he hired some of them?
A. I can't tell you.
Q. Do you remember who they were that he brought over?
A. I remember some of them; that is, I remember the names of some of them.
Q. Who were they?
A. I think you mentioned there were two John Johnsons.
Q. Lorens Johnson?
A. I suppose. I can't say.
Q. Give us those that you can remember, then?
A. I can't give you those.
Q. You can't give the names?
A. No.
Q. You talked that over with your counsel this morning?
A. No.
Q. How did it happen there were seven mentioned, then?
A. In coming up there was something that I stated that I thought there was five, and I think he said there were seven. I thought there were five, but he said there were seven.
197 Q. You mean to say that you haven't talked over the names of these five or seven men?
A. I mean to say I have not.
Q. And that you can't remember them?
A. No, sir.
Q. Not any of them?
A. If you mention them I will tell you some of them.
Q. I will mention Sven Larson, then?
A. I can't tell you.
Q. And how was it about Peter Norell?
A. My impression is Peter Norell was one of the first.
Q. Andrew Svenson?
A. Possibly.
Q. Possibly?

A. Yes, sir.
Q. Where did these men come together?
A. I can't tell you.
Q. Didn't they assemble at Taylor's Falls, Minnesota, or Wisconsi which is it?
Mr. SANBORN. Taylor's Falls, Minnesota.
Mr. FLANDERS. Didn't they assemble at Taylor's Falls, Minnesota?
A. I can't tell you. I suppose they would.
Q. Were you not informed that they did?
A. I don't know. I can't tell you.
Q. Didn't you direct Johnson to have them come together at Taylor Falls?
A. Not that I know of.
Q. Did you furnish John Johnson with the money to bring the over?
A. I don't know.
Q. Did you keep books then?
A. I must have had a memoranda. I didn't keep books. I may hav had a memorandum or made a memorandum. I had to make an account ing to the association, and of course I must have had some figures t make the accounting to the association.
Q. Have you got those memorandum books that you had there?
A. No.
Q. Where are they?
A. I think they are destroyed.
Q. You think so?
A. Very likely in the Chicago fire. I don't know.
Q. You are not in the habit of destroying memorandum books an books of account, are you?
A. After a certain time.
Q. Mr. Stinson, don't you know that you provided the money wit which Johnson took those men over to Superior?
A. I don't suppose any money was necessary.
Q. Such as there was?
A. I may have given some money or bought provisions, or something of that kind.
Q. Did you go over from Taylor's Falls to Douglas County with thos men?
A. I can't tell you. I traveled between Taylor's Falls an
198 Superior a good many times and under different circumstances and it was mixed up. When I went with this party or the othe party I can't tell you.
Q. When they got over to Superior what did they do?
A. My impression is that the company quartered them there and pu them to work.
Q. Mr. Stinson, when you say the company why don't you say wh did it?
A. We will say William H. Newton was working with them.
Q. What was that?
A. William H. Newton.
Q. Did what?

A. Took charge and put them to work.
Q. Where d'd he put them to work?
A. Some of them breaking lands and some clearing streets.
Q. No, but the quarters; where did they live?
A. They lived in the same house, but what house it was I can't tell.
Q. Was it your house?
A. No, but it was one that belonged to the association.
Q. Did you tell them where to go?
A. No.
Q. Did John Johnson tell them where to go?
A. I suppose he found out.
Q. Whom did he find out from?
A. Very likely from some of the association.
Q. I didn't ask you what he did very likely. You hired him, you say?
A. I did, yes.
Q. Now, when he came to Superior didn't he report to you?
A. I may not have been there. I don't know.
Q. I don't ask what may not have been. I ask when you came to Superior didn't he report to you?
A. I don't know.
Q. You have forgotten that?
A. I have forgotten any report he made.
Q. Did you see him when he came there with this body of Swedes?
A. I don't know whether I did or not.
Q. You have forgotten that?
A. I have forgotten that.
Q. You have talked this over with your counsel, haven't you?
A. No.
Q. You have heard about this testimony that was given in Minnesota in March?
A. I have heard about it.
Q. Read it, haven't you?
A. Yes.
Q. And you have thought about it since and before?
A. To some extent.
Q. But you have forgotten whether you saw John Johnson over there in 1854 or not?
A. I saw him there.
Q. You say that now?
A. This was on his arrival. I saw him there afterwards, and saw him at work.
199 Q. Did you yourself receive a report from John Johnson after he got there, whether it was on his arrival or afterwards?
A. I don't remember. If I was there I must have heard of it, but I don't recall it.
Q. If you were there he reported to you, did he not?
A. He may have reported, as I told him that I hired him for the association. He may have reported direct to Mr. Newton.
Q. I didn't ask you that.
A. I am telling you all I know.

Mr. FLANDERS. I move to strike out that portion of the answer as not responsive to the question.

Mr. BASHFORD. I object to its being stricken out.

Mr. FLANDERS. What work did these Swedes do?

A. General work around for the association, cutting down trees, making streets, assisting in making docks and different work relating to the business of forming an embryo city.

Q. Cutting down trees where?

A. On the streets.

Q. How long did they stay there?

A. I don't know.

Q. You don't know?

A. No.

Q. You have forgotten that?

A. I have forgotten that.

Q. Was it a minute or a day or a week or a month?

A. It was some time. They don't make streets in a minute or a day. It was, maybe, we will say, a month.

Q. How long did it take to go from Taylor's Falls over to Superior?

A. My recollection is about three days.

Q. And about as long to go back?

A. About as long to go back.

Q. How much did you agree to pay these men?

A. $30 a month.

Q. And their keep besides?

A. I have forgotten whether they kept themselves, or they were furnished. My impression is that they kept themselves.

Q. They lived together in one house, didn't they, while they were in Superior?

A. I don't know.

Q. You saw them there, didn't you?

A. I don't remember seeing them in their house. I only remember seeing them at their work.

Q. Didn't you see them in their quarters there? Weren't you in that house?

A. I wasn't in that house or in their quarters, to my knowledge.

Q. They didn't spend all the time on their work there, did they?

A. I suppose so.

Q. You don't think that, do you?

A. What do you mean?

200 Q. Didn't you go out in the country with them?

A. No.

Q. Didn't go out with them at all?

A. No.

Q. Not with any of them?

A. Not with any of them.

Q. You didn't go out when they made these efforts to make a claim on the land out there?

A. No.

Q. You read the testimony of these witnesses given up in Minnesota?

A. I read some of the testimony, yes.

Q. And so far as they stated that you went out with them and showed them where to locate their claims that is not true?

A. That is not true.

Q. You knew the fact that they did go out in the country, didn't you, and of their making an effort to make claims?

A. I think in some of my peregrinations around there I saw claims, and I was up among some claims.

Q. You saw them out there?

A. I saw them on one claim. In looking about, I have a recollection of looking about, and I came across them on one claim.

Q. Who was that?

A. I don't know.

Q. You don't know?

A. I don't know what claim it was.

Q. But you knew the fact to be that they were out there pretending to make settlements on this land?

A. I found one out there.

Q. Have you any objection to answering my question? (Question read.)

A. I didn't know, in fact, of their pretenses at all.

Q. I will put it this way: You knew the fact to be that they were out there pretending to make settlements, or actually making settlements, on that land, did you not, while they were over in Douglas County?

A. I found out in this instance that they had a claim.

Q. Didn't you know, as a matter of fact, that these Swedes, while they were over there in Douglas County and while they were out in the country and while they were under pay from you, were out in the country making or pretending to make settlements on the land?

A. That is a question I could not answer.

Q. That is a question that you could not answer?

A. No, it is so leading.

Q. What?

A. So leading, "and under pay from me." I can't answer it in that sense. I may have known the Swedes were making settlements.

Q. You object to leading questions, do you?

A. I object to the question as put there, because I don't know it is correct. I can't answer.

Q. You think that two counsel here retained and paid by you are not sufficient to make objections to the form of the questions?

A. The questions that I make objection to come from counsel,
201 and it is for me to answer the questions, whether I can answer them or not.

Q. You think that question a mixed question then, do you?

A. Most decidedly.

Q. Decidedly mixed?

A. Yes, sir.

Q. Well, I will unmix it then, and I will ask you whether or not you knew while these Swedes were in Douglas County that they were out there making or pretending to make settlements on the land?

Mr. BASHFORD. Knew it when?

Mr. FLANDERS. While they were in Douglas County. That was in the question.

A. In answer to that I must say that in one of my tours of the county I found the Swedes making a claim. They told me they were making a claim when I found them there.

Q. How many?

A. I don't know.

Q. Don't you know, as a matter of fact, at that time that they were making or attempting to make settlements on the land?

A. I supposed some of them were making settlements.

Q. Don't you know that they were all making or attempting to make settlements on the land?

A. No.

Q. At that time?

A. No.

Q. You didn't?

A. No.

Q. What did you know about it?

A. That some of them were making settlements.

Q. You knew that at the time it was going on?

A. I found it out, yes.

Q. At the time that they were do'ng it?

A. Yes.

Q. They were all under the charge of the first John Johnson, weren't they?

A. I don't know.

Q. What?

A. I don't know.

Q. Didn't you put them in charge of him?

Mr. BASHFORD. Only for the purpose of doing the work.

A. No.

Mr. FLANDERS. When they came over to Douglas County weren't they put in the charge of John Johnson?

A. No, they were put in the charge of Newton.

Q. You paid them, didn't you?

A. No, Newton paid them.

Q. You didn't pay them?

A. I paid him for them.

Q. Didn't you yourself do the paying?

A. Some of it I did.

202 Q. Where did you do that paying?

A. I did it at different places, and I can't tell you where they were.

Q. Did you pay them for the time they spent in Douglas County?

A. I don't know.

Q. What?

A. I paid them, I suppose, for a portion of their time.

Q. I didn't ask you what you supposed.

A. I can't give you more than I know. I only know that the chances are that I paid them a portion.

Q. I am not asking what the chances are, only the facts.

A. As far as I remember I only paid them a portion.

Q. What portion of the time?

A. I can't tell. It was not a portion of the time, but it was simply that the conveniences were such that they couldn't have had it there, and I was called upon to raise money for the association to pay it.

Q. Don't you know the fact to be that you went back from Douglas County to Taylor's Falls with those men yourself and settled with them at Taylor's Falls and paid them up?

A. Possibly. I don't remember that I did, but that would be in the order of things.

Q. So you paid them up at Taylor's Falls for their time?

A. I don't know. I don't know that I paid them at Taylor's Falls. I suppose it must have been somewhere else. I had no money at Taylor's Falls to pay with. I must have gotten money somewhere else, or they must have gone somewhere else to get it. I wasn't carrying the money with me.

Q. At all events you say they were paid for all the time they spent in Douglas County, do you not?

A. No, it was the time they were paid for doing work for this company.

Q. Do you mean to say there was any deduction made for the time they were engaged in making or pretending to make entries upon the land?

A. I don't understand you.

Q. (Question read.)

A. I mean to say that when they were making entries on the land the association didn't pay them for that.

Q. I didn't ask what the association did pay. Listen to the question and answer it. (Question read.)

A. I don't recollect.

Q. Who were the Swedes that you saw out there in the country making or pretending to make these entries?

A. I only knew that they were Swedes. I didn't know who they were.

Q. You knew there were some of these Swedes that you brought over from Taylor's Falls?

A. They were evidently those that I had seen there on the streets.

Q. That were brought over from Taylor's Falls?

A. Coming from Taylor's Falls.

203 Q. Do you know which ones they were by name?

A. There was only one that I knew by name, and that would be Johnson.

Q. Did he make a settlement, or pretended settlement?

A. He was supposed to have made a settlement.

Q. Did you show him where to make his settlement?

A. No.

Q. Tell him where?

A. No.

Q. Did he talk with you about it?

A. I don't know.

Q. You don't know whether he did or not?

A. I don't know. There were many talking about settlements at that time and I can not recall.

Q. Where did you part with those Swedes?
A. At Taylor's Falls, I suppose.
Q. What directions did you give them with reference to going to Hudson?
A. I don't know that I directed them.
Q. What request did you make of them to go to Hudson?
A. I don't know that I made any request.
Q. Do you say that you didn't?
A. I don't remember.
Q. Do you say that you didn't arrange or make an appointment with them to meet you at Hudson?
A. I may have asked them. I am not satisfied whether I did. They were going down in all probability to prove their claims, and I may have told them that I would meet them at Hudson and pay them.
Q. So you think you did make an appointment with them to meet them at Hudson?
A. I am not sure.
Q. What do you think?
A. The only thing is that they were to get money——
Q. I am asking what you think about whether you made an appointment to meet them at Hudson?
A. I don't know.
Q. No idea on that subject?
A. I haven't an idea.
Q. No recollection about it at all?
A. Not about an appointment.
Q. Why did you say it may have happened, then?
A. Because as they were going down there, and Hudson was much nearer to me than Taylor's Falls, I may have in the natural course of things rather have paid them at Hudson than Taylor's Falls.
Q. So you think you did arrange to meet them at Hudson?
A. I don't know. It may have come that way, but I have forgotten.
Q. Hudson was nearer to you than Taylor's Falls?
A. Yes, sir.
Q. Where were you?
A. I was at St. Paul.
Q. You were at St. Paul?
A. Yes, sir.
Q. They didn't live at Taylor's Falls, did they, these men?
A. I think so. That is, in the vicinity.
204 Q. They lived in Chisago County, Minnesota?
A. Taylor's Falls is in Chisago County.
Q. They lived around Center City, didn't they?
A. That is within a few miles of Taylor's Falls.
Q. It is about 45 miles from St. Paul?
A. From St. Paul, yes.
Q. And Hudson is about that same distance?
A. No; Hudson is 18 from St. Paul.
Q. You did meet them at Hudson anyway, didn't you?
A. I think so.
Q. How soon after you parted with them at Taylor's Falls?

A. I have forgotten.
Q. About how soon?
A. I don't know. I have forgotten.
Q. Was it a day or month or year?
A. It was within a month.
Q. It was within a very few days?
A. I don't know.
Q. You read the testimony of these gentlemen up in Minnesota that it was the next day or day after, didn't you?
A. I don't remember. If I have read it I don't remember.
Q. Well, a week or ten days, whatever it was. You have no doubt but that is correct, have you, Mr. Stinson?
A. I have no doubt it is correct.
Mr. BASHFORD. That you met them at Hudson?
A. That I met them at Hudson.
Mr. FLANDERS. When you got down there you bought up their claims, didn't you?
A. Some of them.
Q. Some of them?
A. Yes, sir.
Q. Whose didn't you buy?
A. I don't know.
Q. I am now speaking of these seven that you were talking about in 1854.
A. Some of the seven I bought.
Q. Didn't you buy them all?
A. No.
Q. Well, how many did you buy, Mr. Stinson?
A. From what you state there I suppose there was five bought.
Q. Those were John Johnson, Lorens Johnson, Sven Larsen, Peter Norell, and Andrew Svensen. I am now speaking of the fall of 1854. You bought up their claims, didn't you?
A. I secured them.
Q. Secured them?
A. You say bought. I don't know whether I bought them or not, or whether they were bought for somebody else, but I know I got them.
Q. What do you mean by that kind of an answer?
A. I mean that they were bought and that I got them.
205 Q. Do you mean to say that you can't tell whether you bought those claims or not?
A. Yes, sir; that is just what I mean to say, whether I personally bought them or through an agent.
Q. Is that what you mean, whether you bought them personally or through an agent?
A. That is what I mean.
Q. You were there?
A. Certainly.
Q. And you furnished the money?
A. I paid the money.
Q. Did you or did you not furnish the money which was paid to these men?

A. I paid the money.
Q. Why don't you answer my question?
A. I did. You asked whether I was there or not, and I told you I did.
Q. How much did you pay these men?
A. I don't know.
Q. You can't tell?
A. No.
Q. Whether it was a dollar or five dollars or ten or twenty?
A. I suppose the deed will tell.
Q. I am asking you how much you paid these men.
A. I don't know. The deed will tell. I had a memorandum of paying at that time. I haven't got it now.
Q. You paid the Government fees, didn't you?
A. No.
Q. What?
A. No; I don't remember paying the Government fees.
Q. Do you say you didn't pay the Government fees?
A. I say I don't remember paying them. I don't know that I did.
Q. I am asking whether you did pay the Government fees?
A. I say I don't know. The chances are that I did not.
Q. I haven't asked your chances, and I move to strike that out.
A. You should be satisfied with that, because I don't know, and have to ask these things.
Q. I ask you now whether you say you didn't pay the Government fees?
A. I say I don't know.
Q. Are you willing to say that you didn't pay the Goverment fees?
A. I think I did not.
Q. That is as far as you will go?
A. That is as far as I will go.
Q. You employed Gibson, didn't you?
A. Yes; Gibson was acting to a certain extent as a broker.
Q. Do you wish to change that answer that you employed Gibson?
A. In the sense that Gibson was acting for all the parties.
Q. Do you wish to change the answer that you employed Gibson?
A. I don't know what I would put it if I changed it. I don't know how to explain it.
Q. I am asking if you wish to change that answer or not?
A. Gibson was acting for me in the matter.
206 Q. Do you wish to change the answer that you first gave that you employed Gibson?
A. No; I employed Gibson.
Q. You have read Gibson's testimony, have you not?
A. Yes, sir.
Q. Gibson's testimony is as you remember it?
A. No.
Q. It is not as you remember it?
A. I don't remember it that way.
Q. You remember that you met him across the lake and engaged him and paid him $20?

A. I don't remember.

Q. But you do remember that you employed him?

A. I remember that Gibson was living in Hudson. My business in Hudson called me there pretty often, and I was acquainted with Gibson, and when I required notarial or other services I used to call on Gibson for it.

Q. Was John Johnson the first there with you in Hudson?

A. Yes, sir.

Q. Did you pay these men for their time coming down from Chisago to Hudson and back?

A. I don't know?

Q. You don't know?

A. No.

Q. What is your recollection about that?

A. My recollection is they were paid for their deeds, and that was included in the deed.

Q. And that the deed included so much for their time coming down?

A. If there was anything for time it would have been. I didn't pay them for their time.

Q. It was included in the deed?

A. If they had any claim or anything to be paid it was in the deed.

Q. Is it your recollection that there was something included in the deed for their time?

A. No; my recollection is that the time had ceased.

Q. Why did you say that it was included in the deed, then?

A. I mean to say simply that all claims were settled when the deed was made.

Q. Didn't you say what was coming to them for their time was included in the deed?

A. No; I didn't include [intend] it in that sense. I mean if there was anything for time it was included in the deed.

Q. Was there anything included for time coming down there and going back?

A. Not that I know of.

Q. Do you mean to say not that you know of?

A. I mean to say it was not reckoned. I did not reckon it that way.

Q. Did they reckon it?

A. I don't know how they reckoned.

Q. Did they tell you they reckoned it that way?

A. No.

Q. Do you know what the Government fees were on a quarter section of land?

A. $1.25 an acre, $200.

207 Q. And whatever sum was paid to the Government you furnished the money, didn't you?

A. No.

Q. You didn't?

A. No.

Q. You don't mean to say that these Swedes had any money down there?

A. I don't say anything about that; I say I didn't.

Q. You don't mean to say that these Swedes had any money down there?

A. I don't say what they had.

Q. You know they hadn't.

A. I don't know anything about it; I can't tell what another man has; I don't know.

Q. You have read the testimony of one or more of the witnesses who gave their depositions in Minnesota in which it is stated that they didn't furn'sh any money, have you not?

Adjourned until 2 o'clock p. m.

2 o'clock p. m.

Parties met pursuant to adjournment.

Present same as before.

It is conceded by the defendants that before the deed from the defendant James Stinson to the defendant Henry J. Stinson was made, Henry J. Stinson knew of the previous suit between the United States of America and the defendant James Stinson in relation to the land described in this complaint, and knew of the allegations and claims of the United States in relation to such lands as set out in the pleadings in such former suit, and before such deed was aware of the fact that the previous suit referred to was dismissed for want of prosecution.

James Stinson being recalled, his direct examination was continued by Mr. Flanders, as follows:

Q. You have read the testimony of Israel Johnson and Lorens Johnson, have you not, Mr. Stinson, in which they stated that they did not furnish any money to pay the Government with at Hudson?

A. I suppose so.

Q. Well, the testimony that was taken up in Minnesota; you know whether you have read it or not, don't you?

A. Yes, sir; I have read it.

Q. You do not wish to deny their testimony, do you?

A. How do I know.

208 Q. You can say whether you want to deny it or not. What is your answer?

A. Do you want an answer?

Q. Yes.

A. I don't deny it or know anything about it.

Q. Do you wish to deny the statements that they make there, that you furnished the money?

Mr. BASHFORD. I don't think they made that statement.

A. Do they make the statement that I furnished the money?

Mr. FLANDERS. Yes.

A. If they do, I deny it.

Q. Do you deny that you yourself paid the money to the land office?

A. I deny it; yes.

Q. Or that you furnished the money to them with which to make the payment to the land office; do you deny that?

A. I don't know how that money was supplied; I deny that I did.

Q. Do you deny that you furnished the money to these witnesses to pay the land office.

A. Yes.

Q. Do you deny it?
A. I deny it.
Q. You took some Swedes over in the year 1855, did you not, to Douglas County?
A. I think not.
Q. Well, arranged to have them taken over?
A. I don't know that I arranged to have them taken over.
Q. You hired them, didn't you?
A. No; I didn't.
Q. Or caused them to be hired?
A. No, sir.
Q. Did any come over there?
A. Over where?
Q. To Douglas County.
A. Evidently there was some in Douglas County.
Q. How did they come over there?
A. They went over, I suppose, to make claims.
Q. I don't ask what you suppose. How did they happen to come over there?
A. I don't know.
Q. Did John Johnson have anything to do with it?
A. Yes; I suppose so.
Q. Was he in your employ?
A. No.
Q. Did you employ him?
A. No.
Q. Was he working for you then?
A. No.
Q. Or for this association that you spoke of?
A. No.
Q. Or at all during the year 1855?
A. I am not certain, but I think not.
Q. Did you see them over there?
A. I don't recall it.
Q. Did they do any work for you over there?
A. Not that I know of.
Q. Not that you know of?
A. I don't know of their doing any work for me.
209 Q. If they did work for you over there you didn't know of it?
A. Possibly.
Q. Then why do you say——
A. The fact is that what they were doing there and my memory of the year I am not positive of.
Q. The number of the year?
A. The year and the work, as they were working there for this association, I am not positive, but they did no work for me directly.
Q. Did you know that they were taking up claims there or pretending to?
A. I had advices that they were.
Q. Did you see them out there?
A. I did not.

Q. On their claims?
A. I did not.
Q. Did you travel with them from Douglas County to Taylors Falls, or from Taylors Falls to Douglas County?
A. I think not.
Q. Did you pay them anything?
A. I paid them when the claims were purchased.
Q. When was that?
A. I don't know.
Q. Where was that?
A. At Hudson, I suppose.
Q. Don't you know?
A. I am not certain; no.
Q. You are not certain?
A. No; my impression is it was at Hudson.
Q. Can't you remember whether you paid them at Hudson or did not?
A. I remember paying some at Hudson.
Q. Speaking of these men in 1855, can you or can you not remember whether you paid them at Hudson?
A. I can't.
Q. You have no recollection on that subject?
A. I have a recollection of being over there; I have a recollection of the claims being bought.
Q. Have you any recollection whether they were paid at Hudson?
A. It is my impression they were.
Q. You have a pretty distinct impression of it, haven't you?
A. Not very distinct; distinct enough. I think the deeds were signed there and I think the money was paid there.
Q. You know the deeds were signed there, don't you?
A. Yes, sir.
Q. You knew who drew them, didn't you?
A. No; I didn't.
Q. You have no impression on that subject?
A. I have.
Q. Who was it?
A. I think I drew some of the deeds myself.
Q. Who else?
A. Mr. Gibson drew some, I think.
Q. Who took the acknowledgments?
A. Mr. Gibson.
Q. Who paid Mr. Gibson?
A. That I cannot tell you.
Q. What Swedes did you buy the claims of down there at Hudson?
A. I can't tell you.
210 Were you at Hudson buying claims, as you call it, more than once in 1855?
A. I think so.
Q. Did you pay money to Aaron Peterson.
A. I don't know.
Q. In Hudson?

A. I don't know.
Q. Have you any impression about that?
A. No.
Q. You know you got a deed from him, don't you?
A. I believe so.
Q. Did anybody else pay money to these men for you?
A. I think so.
Q. Who was it?
A. Well, Mr. Gibson, I think, in some cases, and Mr. Johnson in some cases, or I may have paid some myself.
Q. Did either of those men pay money to them when you were not present in Hudson?
A. I can't say.
Q. You can't remember?
A. No.
Q. Are you ready to say that you can't tell whether you advanced any money to Gibson or Johnson to pay money to these men when you were absent from Hudson?
A. I can't say.
Q. You are not able to say whether you did or not?
A. No.
Q. Your memory has not failed you any since lunch has it?
A. I don't know that; I suppose when memory fails we can't always tell ourselves; sometimes dinner makes an effect.
Q. Has an effect?
A. Yes, sir.
Q. Do you think it had any effect on you?
A. Well, never mind that; it is not to the point, I think.
Q. You think that is not to the point?
A. No.
Q. How is it about Israel Johnson; did you pay any money to him in Hudson?
A. I don't know.
Q. You have forgotten about him?
A. I don't know that I ever knew; I don't know anything about it.
Q. Did anybody pay money for you to him?
A. I can't tell.
Q. You can't tell that?
A. No.
Q. How was it about Westerland?
A. In respect to paying money?
Q. Yes.
A. I can't tell.
Q. Did you pay any money to him in Hudson?
A. I can't say.
Q. Or did any one pay any money to him in Hudson for you?
A. I can't say.
Q. Did you pay money to him, or did any one pay him money for you anywhere else but Hudson?
A. I don't know that. I suppose he received money there, but I don't know who paid it.

Q. Do you understand the question includes both money that
211 you paid or that was paid for you there?

A. I don't understand you now.

Q. Did you pay any money to him in Hudson, or did any one pay money to him for you in Hudson?

A. I can't tell.

Q. You can't tell that?

A. No; the papers show it must have been paid, but I haven't it on my mind now. I don't remember paying him money.

Q. I ask you whether you paid him money or did anybody pay him money for you?

A. I told you I don't know; I can't tell.

Q. You can't tell that?

A. No.

Q. How is it in reference to Martin Larsen?

A. I don't recall Larsen.

Q. Did you pay money to him, or did any one pay money to him for you?

A. I don't know.

Q. You don't know?

A. Is he included in the deeds?

Q. All these men are included in the deeds.

A. Well, they must have had their money.

Q. That is what I am asking.

Mr. SANBORN. You don't recollect them by name?

A. No.

Mr. FLANDERS. Do you wish to deny that money was paid to each one of these, either by you or some one for you?

A. No.

Q. Do you wish to deny that it was so paid in Hudson?

A. I don't know how it was paid.

Q. Do you wish to deny it was so paid?

A. When I don't know anything about it I don't wish to say.

Q. Answer the question.

A. I don't know.

Q. How?

A. I don't wish to deny anything; I simply don't know.

Q. How was it about Andrew Wallmark; did you pay him money, or was money paid to him for you in Hudson?

A. I don't know about it.

Q. Do you wish to deny that money was paid to him by you or for you in Hudson?

A. I don't wish to deny anything that I don't know.

Q. How was it about Otto Wallmark?

A. The same with regard to Otto Wallmark.

Q. You know that deeds were procured running from these men to you?

A. Yes, sir.

Q. And that money was paid to them?

A. The money was paid.

Q. In that matter? And Gustav Johnson—how was it about him?

A. The same, I suppose.
Q. Money was paid to him by you or for you, was it?
A. Yes.
212 Q. And in Hudson?
A. As I say, I am not always sure about Hudson.
Q. Was it done anywhere else than Hudson?
A. I don't know.
Q. Have you any recollection of it being done anywhere else than Hudson?
A. I have had transactions outside of Hudson.
Q. I am speaking of these men.
A. I can't recall those men distinctly.
Q. You were there in Hudson at the time these deeds were taken, were you not?
A. Evidently.
Q. You drew some of the deeds yourself, you say?
A. Yes, sir.
Q. And you engaged Gibson to help draw them and act as notary?
A. Correct.
Q. How was it about John Johnson? Was he one of those that were there and to whom money was paid by you or for you?
A. I don't know.
Q. How?
A. I don't know.
Q. You don't know. Well, you have set him up in your answer as one of the persons from whom you took a deed, haven't you?
A. It is possible.
Q. And if it is in your answer——
A. It is correct.
Q. And money was paid to him by you or for you in Hudson, was it?
A. Yes.
Q. How was it about Sven Magnussen; what do you say about him?
A. I don't know about him any different.
Q. He was one that you set up in your answer as having taken a deed from, wasn't he?
A. Possibly.
Q. And if he is set up in the answer by you he is one to whom money was paid by you or for you in Hudson, is he not?
A. Yes.
Q. How much money did you pay these men in Hudson or how much was paid to them by you or for you in 1855?
A. I don't know.
Q. Did you pay money to Israel Johnson in Hudson in June, 1855?
A. I don't know.
Q. Was money paid to him there for you or by you?
A. I can't tell.
Q. Do you wish to deny that money was paid there to him by you or for you?
A. I don't know.
Q. What is your answer?
A. I say I don't know; I don't want to deny anything I don't know.

Q. Andrew Svenson, did you pay money to him or was money paid to him for you in Hudson in 1854?

A. I don't know.

Q. His name is in your answer as one from whom a deed was taken?

A. Yes; the chances are that money was paid.

213 Q. Either by you or for you?

A. Yes, sir.

Q. And in Hudson?

A. I suppose in Hudson.

Q. I think that is all.

Mr. SANBORN. In answer to a question of Mr. Flanders, as to what was the highest amount of salary that Mr. Stinson paid to any one in his office, it is conceded it is $2,500 a year to Quentin Johnson.

Cross-examination by Mr. BASHFORD:

Q. Mr. Stinson, with reference to the lands purchased by the association you have named, how was the interest of the different members of the association represented; by shares or by deeds to the land?

A. By shares.

Q. And this association was interested in laying out a town site at what is now Old Superior; is that a fact?

A. Yes.

Q. And these men who were employed were engaged for the association in making streets and other employments in the new city?

A. Exactly; clearing streets, surveying, and other work.

Q. Who were the names of these associates?

A. Mr. Cochran, of Washington, Jesse D. Bright, Stephen A. Douglas, Henry M. Rice, and one Dawson, Senator Dawson, of Pennsylvania, Benjamin B. Thompson, Mr. Hollingshead, Mr. Baker, and some others.

Q. Nelson?

A. Nelson, D. J. A. Baker, Daniel A. Robertson.

Q. Who was this Judge Nelson?

A. He is the judge that resigned here a year ago.

Q. In St. Paul?

A. Yes.

Q. And the title to the lands was taken in Judge Nelson's name?

A. Judge Nelson, I think, and Mr. Baker.

Q. Newton?

A. And Newton.

Q. Newton was one of the associates then, was he?

A. Yes, sir; Newton was one of the associates.

Q. William H. Newton?

A. William H. Newton.

Q. He was the one that had charge of these improvements more particularly?

A. He was more particularly the superintendent; yes.

Q. You say that you became acquainted with John Johnson down in Chisago County, Minnesota; did he live on a piece of land yours there?

A. I believe so.

Q. And you were living for the time being at St. Paul?

A. Mostly St. Paul; between St. Paul at this time and Superior.

214 Q. And it was on behalf of the association that you requested Johnson to take some men up there to do this work?

A. Yes.

Q. Is it not a fact that labor was very scarce in that country at that time?

A. There were none there comparatively.

Q. What was the character of the land about the proposed new town site?

A. Timber country, with a clay soil and moss on the ground, mostly dead.

Q. Quite heavily timbered?

A. Timbered with a variety of birch, tamarack, and occasionally an oak and pine.

Q. Some Norway pine?

A. Norway pine and the American pine.

Q. Were there any roads laid out at all through that country?

A. None.

Q. Were you able to talk with any of these Swedes that Johnson brought there?

A. No.

Q. Johnson was the only man you could talk with among them?

A. Johnson was the only one.

Q. You say after these men came there to work they were not under your personal direction?

A. No.

Q. And of course you don't know where they were housed nor what work they did?

A. No.

Q. You think you may have seen 'hem at work at some time on the streets?

A. I have no doubt I did, but I was assisting Newton in looking after them.

Q. You have no distinct recollection of seeing them at any particular time or place, though?

A. No.

Q. You say you saw what you think was a house put up there by one of these claimants; do you recollect anything about the character of the improvements?

A. I don't; I had an idea of the character of the improvements there. They all appeared to be pretty nice improvements for the condition of the country.

Q. State whether or not it was easy to put up a cabin there.

A. It was comparatively easy. This Norway pine cut into very nice logs, and then we had a tamarack that cut into very nice logs, and a house could be put up with great facility, and the Swedes were very handy in putting them up. They were accustomed to the use of the axe.

Q. Can you state whether you ever saw the particular tracts of land which these Swedes located and proved up upon before you bought them?

A. Not to know them.

Q. You mean by that you may not have seen them?

A. I have been over the country, moving about, and may have seen them, but I wouldn't know them.

Q. You never sought to identify or locate them before you bought them?

A. No.

215 Q. You could tell from the location from the quarter section something near where they were situated?

A. Yes.

Q. At the time you authorized Johnson to employ these men did you authorize him to employ them for the purpose of taking up claims?

Mr. FLANDERS. We object to that as irrelevant, incompetent, and immaterial, and on the further ground that the witness is incompetent to give testimony on that subject.

A. I didn't.

Mr. FLANDERS. That objection I suppose may stand, and to all similar questions.

Mr. BASHFORD. Yes.

Q. You say you have no recollection whether you went back to Taylor's Falls in 1854 or not, when they finished their work there. You say further that you have no recollection of making an appointment to meet them at Hudson. That is your testimony, I believe?

A. Did you say to Taylor's Falls, or to Superior?

Q. I withdraw the question. Did you state that your recollection was that you went with these men in 1854 from Superior to Taylor's Falls when they returned, or what is your recollection about that?

A. It is rather confusing, is it not, "whether you went to Superior and returned?" What do you mean by "returning?" Put that again.

Q. I will put the question this way: Do you recollect whether or not you went with any of these Swedes from Superior to Taylor's Falls in 1854, after they finished their work at Superior?

A. I have a recollection of passing with the Swedes somewhere, but I can't recollect now what particular time, or whether it was going or coming.

Q. You stated, I think, that you may have met them at Hudson at a later date, for the purpose of settling with them for their work at Superior?

A. Yes.

Q. Did you advance the money for the company for the payment of the wages of the men that worked at Superior in 1854?

A. I advanced some money.

Q. You don't recollect how much you did advance at that time?

A. No, I don't.

Q. Your recollection is that if you met them at Hudson in 1854, it was for the purpose of making a settlement with them for their work at Superior?

A. In part, yes.

216 Q. Did you at that time, before these parties made proof of their claims, advance any money to them for the purpose of making payment for these claims to the Government?

A. I think not, no; I did not.

Q. Did you personally communicate with any of those parties at all, except John Johnson?

A. No.

Q. These men were paid the amount you agreed to pay for their claims after or at the time the deeds were delivered to you, were they?

A. Yes.

Q. Do you know whether you made the payments personally or whether the payments were made through Johnson?

A. I can't tell.

Q. Have you any recollection whether Gibson made any of those payments for you?

A. I can't tell.

Q. Do you recollect who negotiated the purchase of those claims of those men?

A. Not definitely; I think it varied maybe between Johnson, Gibson, and myself.

Q. Did you have any understanding with any of these men with respect to the purchase of their claims before they had made their proofs at Hudson?

A. None; it was never mentioned in the subject of conversation, or ever mentioned at all.

Q. You couldn't, then, have made any advance to them of the purchase price before the proof was made?

A. No.

Q. Are you sure about that?

A. I am sure of it.

Q. Did you ever authorize John Johnson to make any arrangement with these men for the purchase of their claims before they had proved up their claims?

A. No.

Q. Did you ever furnish John Johnson any money to be paid to those men for their claims before they had made their proofs?

A. No.

Q. Did you ever authorize Gibson to advance any money to any of those men before they had made proofs?

A. Never.

Q. Did you ever have any arrangement or understanding with those men at any time for the purchase of their claims before they had made proof of their claims at Hudson?

A. I know there never was any arrangement, to my knowledge.

Q. Had you learned before you went to Hudson in 1854 to settle with these men, that they desired to sell the claims which they might obtain from the Government?

A. I had not learned.

Q. I suppose after their return to Chisago County, and finding their friends located there, that they grew sick of Superior and decided to stay in Chisago County, and thereupon decided to sell their claims?

Mr. FLANDERS. I object on the ground that it is not the subject of expert testimony.

217 Mr. BASHFORD. Is that the impression you got about it? Do you recollect anything about that now?

A. I don't remember.

Q. In respect to the claims you bought in 1855 I will ask you whether or not you had any understanding with any of those men before they had proved up their claims, with respect to the purchase of those claims?

A. With none of them. There never was any understanding about purchasing until the entry was made.

Q. Had you before the entry was made furnished any money yourself personally to these men to make payment to the Government?

A. I had not.

Q. Had you before the trade was made by these men, authorized John Johnson to advance any money to assist them in paying for their claims to the Government?

A. Possibly, or possibly Gibson.

Q. What do I understand by that answer?

A. It might be to either or to both that under certain circumstances, maybe at the entry, that if they hadn't money that the money might be advanced.

Q. But at that time you had no agreement or understanding that you were to buy the claims?

A. No.

Q. And no money was advanced in expectation or in anticipation of the claims by you?

A. No.

Q. And none was authorized to be advanced by you?

A. No.

Q. I think you spoke of Gibson being something of a broker there himself?

A. Gibson was a good deal the business man of the village at that time.

Q. Did he and his partner run a little bank there?

A. Yes; they evidently had an exchange, and he appeared to be in most everything that pertained to the village.

Q. I believe you said he was the only notary public there?

A. So I understand; yes.

Q. His partner was the agent?

A. His partner was the receiver, I think.

Q. Of the land office?

A. Yes, sir.

Q. But in respect to all these transactions and in respect to each of them I understand you to say that you had no understanding or agreement for the purchase of the claims before the claims were proved up?

A. Most decidedly not. There was never any understanding before the entry was made.

Q. And when the claims came on the market——

A. When the claims came on the market then the purchase was made.

Q. And the money was paid at Hudson or somewhere else by you or some one for you?

A. Yes.

Q. I understand you to say that you don't recall the names of these parties from whom you bought the land readily, and you have
218 been unable to answer as promptly to counsel as you might if you had recalled the names more readily?

A. That is correct, yes. I would have to look over the different items and see. I think there were some of them that didn't enter at all, and some that did, but I have paid very little attention to this except to read casually the evidence of witnesses.

Q. You have bought and sold very large quantities of land in different States during the last forty years?

A. Yes; a little. I am interested in different States.

Q. Your transactions have been quite extensive in real estate matters during all these years, have they not?

A. Well, yes. You might call them so.

Q. And the details of these matters have somewhat passed out of your mind?

A. In doing this it has been very often done outside of myself, and being submitted to me I have given it attention and afterwards dismissed it from me.

Redirect examination by Mr. FLANDERS:

Q. How did you happen to be in Hudson in 1855 when these men were there and when you got these deeds?

Mr. BASHFORD. I didn't understand him to say he was there.

A. Yes; I was there. How did I happen to be there?

Mr. FLANDERS. Yes.

A. I suppose I went there on business.

Q. Did you know these men were going to be there?

A. I think I was there for the association, as well, maybe, as other things.

Mr. BASHFORD. Did you know these particular men were going to be there?

A. I may have.

Mr. FLANDERS. Were you there to pay them?

A. I was there, maybe, to purchase.

Q. From them?

A. Yes, sir.

Q. You knew they were going down there to prove up, then?

A. I suppose so.

Q. You went down there to be there when they did prove up?

A. Yes; I suppose so.

Q. Intending to purchase their claims?

A. To try to; yes.

219 Q. And you may have advanced the money to some of them, or authorized Johnson or Gibson to advance the money to some of them to pay the Government fees?

A. I have forgotten that.

Q. (Question read.)

A. That is correct. I may have done so.

Q. Were you in the habit of advancing money to men to pay the Government fees on lands that were proven up without any agreement with them to convey the land to you?

A. Yes.

Q. You made a business of that?

A. No; I didn't make a business of it.

Q. Did you ever do it in any other instance than these?

A. None, maybe, except through the association.
Q. Did you do it through the association or for the association?
A. It was done.
Q. Did you do it for the association?
A. I think so.
Q. Advanced the money to pay the Government?
A. Advanced the money to pay the Government.
Q. Did you ever do it in any other instance except these instances?
A. I don't recall.
Q. You can't recall any other instance?
A. Except about the Superior lands.
Q. Can you recall any instance in which you advanced the money t the claimant to pay the Government without any agreement from th claimant to deed the land to you except these?
A. I don't know of any, except as I said.
Q. What do you mean "except as I said?"
A. That it was done in those cases.
Q. In these cases here?
A. In the cases of the association.
Mr. BASHFORD. He does not say that he advanced the money in thes cases.
A. No; but he asked me if such a thing was ever done. We will sa if Gibson advanced the money or Johnson advanced the money he ha the security there in hand until such time as it was settled for. H could get the mortgages from them.
Q. What I ask is whether in any instance other than these at Hudso you advanced the money to the claimant with which to pay the Govern ment without an agreement with the claimant to deed the land to you
A. I didn't get the drift of that.
Q. (Question read.)
A. I can answer that outside of my own cases I don't know anythin about.
Q. I am speaking of your own cases. In your own case did you i any other instance than at Hudson advance the money to the claiman with which to pay the Government without an agreement from the claim ant to deed the land to you?
A. I don't know of any others; no, sir.

220 Recross-examination by Mr. BASHFORD:

Q. Do you mean to be understood as saying that you advanced the money to these claimants in 1854 and 5 to make payments to the Government with an understanding or agreement that they should convey the land to you?
A. I mean to say exactly the contrary. I mean to say that I neve advanced the money.
Q. And you never authorized the money to be advanced?
A. I never authorized the money to be advanced.
Q. Was there any agreement or understanding that the land was to b conveyed to you?
A. I want it most decidedly understood that there was never any agreement; never any agreement approached by any chance.

Q. About those deeds from Israel Johnson and others, do you recollect anything at all about the consideration except what is stated in the deeds themselves as being the amount of the consideration?
A. No; I do not.

JAMES STINSON.

The following errors in transcribing the evidence should be corrected:
In the answer to interrogatory 508 the word "attorneys" should be changed to "association."
The answer to interrogatory 623 should be "No, sir."
The answer to interrogatory 751 should be "Moss on the ground mostly dead," instead of "Moss growing on the trees mostly dead."
In interrogatory 757 the word "person" should be changed to "personal."

HENRY J. STINSON, a witness produced on behalf of the complainant, in the above-entitled cause, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows:

Direct examination by Mr. FLANDERS:

Q. You are the defendant in this case, Henry J. Stinson, are you not?
A. Yes, sir.
Q. And the son of James Stinson?
A. Yes, sir.
Q. Will you state your age and residence?
A. I reside 4436 Drexel boulevard, Chicago. I will be thirty-three the 20th of next July.
Q. What is your occupation?
A. Well, as manager, carrying out instructions, or whatever my father dictates.
Q. How long have you followed that occupation?
A. Near fourteen years, I think. It is thirteen or fourteen years.
221 Q. Have you lived in Chicago during all that time?
A. Yes, sir.
Q. Have you been all that time regularly, I mean?
A. Excepting, occasionally, a trip up north, but no prolonged trip.
Q. Have you followed any other occupation than the one you named?
A. No.
Q. Some evidence has been given in this case with reference to a deed of the property described in the complaint in this case from James Stinson to Henry J. Stinson; what do you know about that transaction?
A. Well, there was a purchase which I made from my father.
Q. When you say a purchase, what did you give for it?
A. I think it was $40,000 I paid.
Q. How did you pay it?
A. Services tendered.
Q. Services tendered or rendered?
A. Rendered.
Q. Had you drawn any money from your father before that occurred?
A. Yes; a little; just enough for incidental expenses, but no salary.

Q. For incidental expenses?
A. Yes, sir.
Q. How much did the incidental expenses amount to by the year; about?
A. Maybe fifteen to eighteen hundred dollars.
Q. A year?
A. Yes, sir.
Q. Are you a married man?
A. No.
Q. You are not now?
A. No.
Q. Where do you live?
A. Down at 4436 Drexel.
Q. You live with your mother?
A. Yes.
Q. You did not, I suppose, pay any board there?
A. No.
Q. And your father paid the expenses of that household?
A. Yes.
Q. You think fifteen to eighteen hundred dollars a year would cover your incidental expenses in Chicago?
A. Well, it is rather a small sum.
Q. Well, what would you think was a fair estimate of it, Mr. Stinson?
A. Why, I don't know; I have left that entirely to my father; salary cut no figure. I took what money I wanted.
Q. Do you know whether an account of it was kept in the books of your father?
A. Account of what I had?
Q. Yes.
A. Yes.
Q. It was kept?
A. I think so.
Q. Fourteen or fifteen years ago?
A. Thirteen or fourteen.
Q. Thirteen or fourteen years would make you between nineteen and twenty then?
A. That was what?
Q. When you became the manager of your father's business?
222 A. No; not manager. I was in another capacity; still I was manager, but not of all his business.
Q. I don't suppose you knew very much about any kind of business then?
A. Yes, sir. I was in the fireproofing business then, the Illinois Terra Cotta Lumber Company.
Q. Before that?
A. No; when I was eighteen or nineteen.
Q. I understood you, not after you became you father's manager?
A. He was president of the company, and I was looking after that end of it; I didn't have charge of his real estate.
Q. When did you come into the charge of his real estate?
A. I think it must have been five or six years, is it not, Mr. Stewart, or seven?

Q. What is this fireproofing business you were manager of?
A. The Illinois Terra Cotta Lumber Company.
Q. Did you follow that all the time from the time you were eighteen or nineteen years ago until five or six years?
A. Yes, sir; I think so. I don't know whether five or six. How long was this, Mr. Stewart?
Mr. STEWART. Somewhere about that.
Mr. FLANDERS. Where was that office?
A. That office was right here in the Tacoma Building.
Q. The same office where your father's real-estate business was kept?
A. It was on the same floor.
Q. Well, did you devote your time to the fireproofing business or the real-estate business?
A. Previous to seven years ago I devoted it to the manufacturing of terra-cotta fireproofing.
Q. Did you draw a salary in that concern?
A. Yes; I got a salary there.
Q. How much was your salary there?
A. I was getting $80 a month. I was getting a dollar a day when I first started there.
Q. Until seven years ago you didn't give any time to your father's real estate?
A. Yes; I was looking after it on and off all the time.
Q. You could not give very much time to it when you were running the fireproofing business?
A. It was not necessary for me to be there all the time. I had a foreman and superintendent.
Q. What is the fireproofing business?
A. They fireproofed the Chamber of Commerce and the Auditorium.
Q. You had how many men in your employ?
A. One hundred and seventy-five, sometimes, down to one hundred.
Q. How much business a year did they do?
A. Now, you have got me; I don't know.
223 Q. Approximately?
A. That is going back so far that I can't say.
Q. Quarter of a million a year?
A. Yes, sir.
Q. Half a million a year?
A. I think it would go that some years, when we had the Auditorium and some other things.
Q. What did you say your position was in that business?
A. I started in as timekeeper and got to managing it.
Q. How soon did you get to managing it?
A. I think I was there a year, maybe.
Q. Then you managed it?
A. Then I had charge of it.
Q. You couldn't run a business of half a million a year with a hundred and seventy-five men, and have much time to spend over your father's real estate business?
A. Not if I hadn't a good force under me; I had a good superintendent and men I could trust.

Q. You had so good a force you didn't have much time to devote to the real estate business?

A. The real estate business was around Chicago mostly. I was always looking after it when I was driving around.

Q. But did you have much time to give to the real estate business when you were managing a business of half a million dollars a year, with one hundred to one hundred and seventy-five men under you in the fireproofing business?

A. What do you mean by giving much time to it? I put in, maybe, an hour and a half or two a day at the terra-cotta business, and the balance of the time I was figuring in the real estate.

Q. You ran the half a million business a year on an hour and a half or two hours a day?

A. Some days more than that.

Q. Is it not a fact that you were not able to give the real estate business any considerable attention until the time you speak of, seven years ago, when you dropped the fireproofing business?

A. Then I gave it entirely my attention.

Q. The fact is that you were not able to give it any particular attention until you dropped the fireproofing business?

A. No, we were consulting every night, every other night on real estate.

Q. That is what you mean by the time you gave to it, is it?

A. Yes.

Q. Other than that you were not able to give it any particular attention?

A. I used to get down here frequently; the offices were the same. The terra cotta was run along in conjunction with the real estate.

Q. I ask you again whether it is not the fact that you were not able to give it any particular attention until after you dropped the fireproofing business, except in consultations in the evening?

A. No.

224 Q. That is not the fact, do you mean, or that is the fact?

A. It is not the fact.

Q. What did you do in it?

A. I would drive around Grand Crossing and various places where we had property, to go and consult about properties we were thinking of subdividing.

Q. How many times did you do it?

A. I did that every day of my life, except when it rained and snowed, the last fifteen years.

Q. Driving around Grand Crossing?

A. Yes; Grand Crossing and South Park, where we had real estate.

Q. Down near Washington Park?

A. Yes, sir; around in there and the Park system.

Q. You think you gave time to it in the daytime; if so, how much? I am not talking about what rides you took at Grand Crossing or South Park.

A. What sales I made, or what hours I put in?

Q. What time you gave it.

A. I may have put in on an average of an hour a day, maybe.

Q. In the real estate business?
A. In the real estate business.
Q. An hour and a half in the fireproofing business?
A. I put more than that in that business.
Q. That is what you stated.
A. I stated some days I was there only an hour and a half.
Q. What did you do the balance of the days when you put in an hour and half fireproofing, and an hour at real estate?
A. I put in on an average at the fireproofing business, I think, from six hours—maybe it would average about five or six hours a day; the balance of the time I was looking after real estate and getting fresh air.
Q. Getting fresh air?
A. Fresh air in the real estate.
Q. When you were taking the fresh air did you take anybody with you or do anything else?
A. No, thanks.
Q. Giving your mind to Grand Crossing?
A. Giving my mind to what buildings were going up.
Q. South Park and Washington Park?
A. Washington Park and the farms.
Q. About how much do you think that your services in inspecting Grand Crossing and South Park and Washington Park was worth those seven years? In the market, I mean.
A. You might ask what a piece of real estate is worth to-day in the market.
Q. No; I am asking what your services were worth in the market.
A. I don't know; I don't know what my father would consider my services worth. It is enough that he considered them worth something.
Q. I am asking what you consider them worth now.
A. Now?

Q. What, now, do you consider those services in inspecting Grand
225 Crossing and driving around South Park and Washington Park and taking fresh air were worth those seven years?

Mr. BASHFORD. That is not a fair way to put it. What were his services worth, in connection with the business for the time he gave to it?
Mr. FLANDERS. I will put it that way. What were the services that you gave to the real estate business reasonably worth in the market, in your father's business, at that time?
A. $5,000 a year.
Q. Don't you think that is rather low for it?
A. No; I think when you get right down to what it was worth——
Q. You were giving five or six hours to the fireproofing business for $960 a year?
A. That was a nominal sum. I was down there taking charge and handling it; the salary was merely a bagatelle. It was not considered a salary at all. I was merely getting that for car fare.
Q. For car fare?
A. Yes, sir.
Q. You didn't ride on the cars much?
A. Yes; I rode on the Illinois Central.
Q. Still you took a salary of $80 a month?

A. Yes, sir.
Q. For seven years?
A. Or six; five or six; I had to keep my salary down. If I raised mine others would be raised.
Q. You didn't raise yours?
A. No, sir.
Q. Could you have raised yours?
A. Most decidedly.
Q. You were the only one that was to be consulted, I suppose?
A. If I wanted it. I always had what I wanted. It was only a matter of form, was all.
Q. After you gave your whole time to the real estate business, how much were your services worth then?
A. I don't know.
Q. Twenty-five or fifty thousand a year?
A. Well, the manager of the sugar trust gets $50,000 a year. I heard of some of P. D. Armour's men getting a few thousand a year; it is something I never spoke to my father about.
Q. Do you think your services, which have been given to the business of James Stinson, are worth twenty-five or fifty thousand a year?
A. Not the last three years.
Q. Say three years before 1894.
A. Take two years before the panic.
Q. We will take the three years before 1894. How much do you think your services were reasonably and fairly worth in the market?
A. What is that question?
Q. (Question read.) The three years when you gave your
226 whole mind to the real estate business before 1894?
A. I wouldn't like to say, exactly.
Q. Give us your best judgment?
A. No; I would like to look up my sales and see what my commissions would have amounted to if I got it outside of the salary. We were doing an extensive business. Salary was something we never talked of.
Q. With your extensive business experience, can't you tell what those services were reasonably worth?
A. I couldn't without looking up the books.
Q. Can't tell whether they were worth five thousand or fifty thousand a year?
A. Oh, yes; worth over five thousand.
Q. Sure of that?
A. Yes, sir.
Q. About how high would you go?
A. I wouldn't state.
Q. You couldn't say any more than that?
A. I wouldn't state beyond that without looking up the books.
Q. The best judgment you could give, then, is that your services in those three years were worth $15,000?
A. Yes; that would be dead cheap.
Q. You think they were worth just as much when you were giving an hour or an hour and a half a day to the real estate business as when you were giving your whole time to it?

A. I was working then.

Q. Do you think when you gave an hour and a half a day to the real estate business your services were just as much as when you gave your whole time to it?

A. I object to an hour and a half; I said there were days when I only put in an hour and a half, but I put in on an average five and six hours a day.

Q. In the fireproofing business?

A. Yes, sir.

Q. I am talking about the real estate business.

A. I put in the balance in the real estate.

Q. How much was the balance?

A. They ran all the time, maybe, from daylight to midnight.

Q. Was it mostly daylight or mostly midnight?

A. We worked on to midnight.

Q. Do you think that the services you rendered previous to the period of seven years ago, to the real estate business, were worth just as much as they were the three years prior to 1894?

A. No; I don't think. I think from 1894, when I gave my whole attention, it was worth a little more, but I wouldn't state without looking at the books and see just what we did.

Q. You wouldn't name any other sum than $5,000?

A. I wouldn't without looking at the books.

Q. How long would it take you to look at the books?

A. The bookkeeper is in Canada now.

227 Q. How long would it take you to look at the books?

A. I can do it on his return.

Q. When will that be?

A. I expect him back in a day or two.

Q. Will you be kind enough to look at the books and state what your services were reasonably and fairly worth in the market for the three years preceding 1894?

A. I will.

Q. When you and your father made this deal and you took this deed, you say there was a certain amount allowed you for services?

A. I took whatever I wanted, and I had it.

Q. That was before you made the deal, though. I am now speaking of the time when you took this deed from James Stinson. At that time you say a certain amount was allowed you for services?

A. That is it.

Q. No account of your services had been kept, had there, of the real estate business?

A. What do you mean by an account?

Q. You took this deed in 1894?

A. Yes, sir.

Q. At that time no account of your services had been kept?

A. Oh, yes; always accounted for whatever money I had.

Q. I am not asking about money, but your services.

A. No.

Q. You were not credited for any amount for services on the books of your father?

A. No, sir.
Q. And no account had been kept?
A. No, sir; except whatever I took.
Q. I am not asking what you did take.
A. We never had any agreement.
Q. Was there any credit given to you on the books for your services before that?
A. No, sir.
Q. You had no account of your services, except what you carried in your head?
A. I took whatever I wanted.
Q. For your services?
A. Whatever I wanted I took, and whatever he wanted to give.
Q. Did you consider you had been paid up to that time?
A. I don't think so yet; I haven't been.
Q. I asked you whether any account had been kept of your services, not the money you had drawn, but your services previous to 1894?
A. No.
Q. So in 1894, when you took this deed, the only thing you had to go by to find out what your services were worth was what you carried in your head; is that right?
A. No.
Q. Where was it?
A. I left it to my father entirely.
Q. You left it to your father entirely?
A. What he thought I was worth.
Q. What he thought you were worth?
A. That is it.
228 Q. You didn't suggest any sum at all?
A. Never made a mention of it.
Q. He plunked $40,000 at you?
A. Yes, sir.
Q. The first time you talked about it?
A. The first time we had a sort of partial understanding.
Q. The first time you talked about it he plunked $40,000 at you, did he?
A. Yes, sir.
Q. Now, he said it took about a month to get around to that?
A. Well, it was a month.
Q. Was it at the beginning of the month or the end of the month he plunked that $40,000 at you?
A. You can search me.
Q. You don't know?
A. No.
Q. I suppose you would have taken $80,000 if he had suggested it?
A. I don't think I would be one to throw it up.
Q. The fact of the matter is, Mr. Stinson, that that $40,000 was lumped into that deal for the purpose of giving it the appearance of a deal in good faith, was it not?
A. Not that I know of.
Q. You don't know that?

A. No, sir.
Q. You accepted it, didn't you?
A. I thought I was getting something.
Q. You thought you were getting something for nothing?
A. No; I would like to know where it all is now.
Q. What?
A. The balance.
Q. The balance of what?
A. The notes.
Q. You have never concerned yourself much about the $1,460,000 worth of notes?
A. I have been sweating about it every night and every minute.
Q. Did you ever give fourteen hundred and sixty thousand dollars' worth of notes at one time before?
A. Not that I can recollect.
Q. Did you ever give notes for five thousand dollars before?
A. No.
Q. Did you ever own five thousand dollars of real estate before?
A. Before when?
Q. Before this fourteen hundred and sixty thousand dollar mortgage?
A. I think so; yes.
Q. What was it and where was it?
A. 1894. I think I had a five-acre block down at Grand Crossing, if I am not mixing the dates.
Q. Whom did you get that from?
A. From my father.
Q. Did he give it to you?
A. I purchased it.
Q. Who purchased it?
A. I did.
Q. You bought it?
A. Yes, sir.
Q. Pay for it?
A. Yes.
Q. In cash or services?
A. There was some coin passed.
229 Q. Yes; I suppose so. Did you pay for it in cash?
A. Well, there was some money passed.
Q. Well, how much money passed?
A. I would have to look up the books to know that.
Q. Can you tell whether it was a great big silver dollar or five thousand dollars?
A. It was not five thousand dollars.
Q. Was it more than a dollar?
A. Yes, sir.
Q. More than ten?
A. Yes, sir.
Q. More than one hundred?
A. I think so.
Q. More than five hundred?
A. No.
Q. It was not over five hundred?

A. No, sir.
Q. Did you pay for the balance in a mortgage?
A. I have got it to pay; it is still running.
Q. Did you pay for the balance of it with a mortgage?
A. Yes.
Q. Mortgage on it?
A. Yes.
Q. I suppose you can tell when that happened by looking up the books, can't you?
A. Yes, sir.
Q. Whether before 1894 or after?
A. I think it was before, but I wouldn't state certain.
Q. Please bear it in mind and look it up.
A. I haven't got the memorandum here.
Q. In 1894 you were not a man of any large pecuniary responsibility, were you?
A. Before 1894?
Q. In 1894.
A. Well, I don't know.
Q. You don't know that?
A. What do you mean; what are you alluding to?
Q. Anything you please.
A. That is what I would like to find out.
Q. Anything you choose to say. I ask you whether you were a man of large pecuniary responsibility in 1894?
A. I was not quite as large as I am now.
Q. You were not so large?
A. Not quite.
Q. I am speaking not of you, but of your pecuniary responsibility.
A. No.
Q. You were not of any pecuniary responsibility in 1894?
A. No.
Q. You knew about this previous suit brought by the United States of America against James Stinson which was dismissed in 1894, did you not?
A. Yes, sir.
Q. You knew about it when it was going on?
A. Yes, sir.
Q. And knew what the claims of the United States were in that suit?
A. No; I didn't.
230 Q. Substantially?
A. I didn't. I didn't know what the claims were. I knew there was a suit.
Q. You knew what the suit was about?
A. Yes, sir.
Q. Knew it was about this land that you took the deed of?
A. Yes; I knew that.
Q. You knew the United States were trying to get it back from your father?
A. I knew that they had brought action.
Q. You talked with him about it?
A. Yes; we consulted.

Cross-examination by Mr. SANBORN:

Q. Won't you state what the object of this transaction was, what the circumstances were that led to this transaction, and what, as you understand it, the real object of it was?

A. The object was, there was one chance in a thousand of this suit being brought up again.

Q. That was the way you looked at it?

A. That was the way I looked at it.

Q. You supposed it was ended?

A. Yes, sir; we thought it ended it, but there was one chance in a thousand of its being brought up again and we didn't care to take that chance, and thought we would do that, so as to dispose of some property and realize on those holdings.

Q. Had the title been tied up a long time?

A. It had been tied up I don't know how many years.

Q. Did you understand it was so tied up that it was impossible to sell or mortgage it?

A. Couldn't sell or mortgage or get a dollar on it, except pay taxes.

Q. That had been running how long, as you remember; several years?

A. Yes, sir.

Q. And the object was to get some use of it?

A. To realize some money on the property.

Q. To enable your father to realize some money on the property, or enable you to sell it?

A. Yes, sir.

Q. Was this idea of enabling him to sell it also in the transaction?

A. Certainly.

Q. If you had an opportunity?

A. I think as well.

Q. And allow him to realize something?

A. Yes, sir.

Q. You have made several transfers since?

A. One or two; I think two.

Q. Was that the main general object of the transaction?

231 A. That was the object, to realize some money to pay taxes on the property up there. If the thing was opened up again there was no chance to do anything with it. It was a dead thing and we had to carry it.

Q. This was to enable you to realize some money to pay taxes?

A. Yes, sir.

Q. They were getting delinquent?

A. They were delinquent, I think, then.

HENRY J. STINSON.

Pursuant to the offer or statement made by defendants' counsel on record pages 275 and 276 of the deposition of James Stinson, the following approximate statement of the amount of notes of Henry J. Stinson which have been negotiated, the amount for which they were are collateral, where and approximately the dates when they negotiated is made to be attached to said deposition.

The amount of $352,000 is held by Alexander H. Moore, manager of Stinson's Bank, Hamilton, Canada, as security for rediscounts of said bank and other transactions entered into by him as such manager. The actual amounts for which these securities are held is entirely unknown to defendants. The date of this negotiation is, as near as defendants can now tell, April, 1894.

The amount of $248,000 is held by John T. Glassco, of Hamilton, Canada, as security for money loaned, endorsements made or to be made up to the amount of about $300,000. The actual amount of loans and endorsements, or for which the securities may be contingently held is not known to defendants. The date of the negotiation of this amount is March, 1894.

The amount of $148,000 is held by the First National Bank of St. Paul as security for loans to the amount of about $25,000, which have been reduced to $15,000, and the date of the negotiation is approximately April, 1894.

The amount of $120,000 is held by the First National Bank of Chicago as security for loans to the amount of about $50,000, which have been subsequently secured also by certain real estate mortgages on property supposed to be worth the full amount of the loans. The date of negotiation is approximately March, 1894.

The balance of the securities is held by defendant, James Stinson, except the amount of $31,615, which have been paid through the sale of a portion of the lands covered by the securities in question.

The books show that Henry J. Stinson drew $4,000 from January, 1890, to March, 1894. Prior to this time the books do not show what amount was drawn or used by him.

232 *Certificate of notary.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, James Abbott, a notary public in and for the county of Cook, in the State of Illinois, do hereby certify that hertofore, to wit, on the 19th day of May, A. D. 1898, at the office of Bulkley, Gray & More in the Home Insurance Building, corner of La Salle and Adams street, city of Chicago, county and State aforesaid, personally appeared James Stinson and Henry J. Stinson as witnesses on behalf of the plaintiff in the above-entitled cause, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as hereinbefore appears; that the testimony so given as aforesaid was by me reduced to writing in the presence of the said witnesses by means of shorthand, and afterwards transcribed upon a typewriter, and that the transcript hereto attached is a correct copy of the testimony so given as aforesaid; that after the testimony was reduced to typewriting the said witnesses signed the foregoing depositions, each his own, in my presence, but refused then and there to again make oath to the same.

I further certify that at the taking of said depositions Mr. Flanders appeared on behalf of the plaintiff, and Mr. Sanborn appeared on behalf of the defendants.

I further certify that I am not in any way related to or counsel for either party to said suit, and that I am in no way interested in the result thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 3rd day of April, A. D. 1899.

[L. S.]

JAMES ABBOTT,
Notarial Public.

Notary's fees $ paid by plaintiff.

JAMES ABBOTT,
Notary Public.

Afterwards, to wit, May 6, 1899, filed stipulation extending time to take evidence, as follows:

233 *Stipulation, filed May 6, 1899.*

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

It is hereby stipulated that the time for defendants to take their evidence in defense in this cause is extended until the first day of July, 1899.

Dated May 5, 1899.

JOHN B. SIMMONS,
Compl't's Sol'r.

SPOONER, SANBORN & SPOONER,
Deft's Sol'rs.

(Endorsed:) Chan. 279 B. Circuit court of the United States of America, complts., vs. James Stinson and Henry J. Stinson, deft's. Stipulation extending time to take evidence. Filed May 6, 1899. F. W. Oakley, clerk.

Notice of taking of testimony, filed May 7, 1895.

May 7, 1895, filed notice of taking of testimony of Otto Wallmark, as follows:

United States of America. In the circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES
vs.
JAMES STINSON AND HENRY J. STINSON.

Please take notice that the testimony of Otto Wallmark, a witness on the part of the defendants in the above-entitled cause, will be taken by deposition de bene esse by and before Frank M. Stewart, U. S. court commissioner, and one of the examiners of the court, at his office in the city of Madison, county of Dane and State of Wisconsin, on the 30th day of April, A. D. 1895, at 9 o'clock in the forenoon, and con-
234 tinuing from day to day until such testimony shall have been taken, at which time and place you are hereby notified to appear and put such interrogatories as you may think fit.

Such deposition will be so taken for the reason that the said witness lives at a greater distance than one hundred miles from the place of trial of this suit, and is about to go out of the country and will not return in time to have his testimony adduced orally.

Dated April 23, 1895.

SPOONER, SANBORN, KERR & SPOONER &
R. M. BASHFORD,
Sol'rs for Def'ts.

To H. E. BRIGGS, esq., and JAMES G. FLANDERS, esq.,
Sol'rs for Compl't.

(Endorsed:) United States circuit court, western dist. of Wisconsin. United States vs. James Stinson and Henry J. Stinson. Notice of taking testimony. Due and personal service of within notice by copy admitted this 23rd day of April, 1895. James G. Flanders and H. E. Briggs, plffs. attys.

Deposition of Otto Wallmark.

On same day, to wit, May 7, 1895, filed deposition of Otto Wallmark, taken at the instance of defendants, as follows:

Circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON ET AL., DEFENDANTS.

Deposition of Otto Wallmark, taken at the instance of the defendants, by and before Frank M. Stewart, U. S. court commissioner for the western district of Wisconsin, pursuant to notice served on solicitors for complainants, Spooner, Sanborn & Kerr and R. M. Bashford, esq., appearing for the defendants and Harry E. Briggs, district attorney, and Edward P. Vilas, esq., appearing for the complainants.

It was thereupon stipulated that the testimony of the witness, Otto Wallmark, might be taken in shorthand by Thomas A. Polleys and afterwards extended upon the typewriter, and that the same be then read over by the witness and subscribed by him with the same force and effect as though read over to him by the examiner.

235 And said Otto Wallmark, being first duly sworn, testified as follows:

Examined by Mr. SPOONER:

Q. What is your name?
A. Otto Wallmark.
Q. Where were you born?
A. In Sweden.
Q. How old are you?
A. I was 64 years old the 12th of December last year.
Q. Where do you reside?
A. Chisago City, Chisago County, Minn.

Q. When did you come from Sweden to the United States?
A. 1854.
Q. Are you about to return to Sweden?
A. Yes, sir; I intend to go to Sweden the 15th of May.
Q. To return when?
A. Well, I calculate to be back about the first of September; must be back then.
Q. Where did you first go when you came to this country?
A. Well, I went to Chicago; we had no particular destination; only when we landed in New York we went up to Chicago, Illinois, and we then went to the Swedish Norwegian consul, or vice-consul, in Chi'ago, and asked his advice where he thought we better go, and he told us that——
(Objected to as improper and as hearsay evidence.)
Q. Go on.
A. And he told us that there was a new place going up at the heard of Lake Superior, and he said that there would be a good chance; that there was plenty of work to be done, and it was likely there was going to be quite a town there; we, however, decided not to go there, and went up to St. Paul——
(The district attorney moved to strike out the statements made by the Swedish consul.)
Q. Did he say anything to you about taking—the possibility of your finding land to enter?
(Objected to as immaterial and irrelevant.)
A. Yes; he said there would be plenty of work and plenty of Government land to be taken; told us all the advantages to be had by going there.
Q. You decided to go there?
A. To St. Paul, Minnesota.
Q. Did you at ony time declare your intention to become a citizen of the United States?
A. Yes, sir; I took out my first papers in St. Paul, in the court-house there.
Q. What year?
A. '54; in the fall of '54. I am not sure whether it was in November or December.
Q. Who came over with you on the ship?
A. Well, there was several of them; my brother, Andrew Wall-
236 mark, and several others that scattered about the country. I don't know what became of them.
Q. Who was with you when you took out your first papers?
A. My brother Andrew.
Q. Did he take out his papers at the same time?
A. Yes, sir; we both took out our papers at the same time.
Q. And you went then to Chisago County?
A. Yes, sir; we went up to Chisago County. We heard some of our countrymen had settled up there, and we went up to see how the county looked, and we stopped there with a family until later in the fall, when we hired out for the pineries, and went up to the pineries and worked during the winter of '54 and '55.

Q. Had you done any work up there before you went into the pineries to work?

A. No, sir. Well, during the summer we were working out in the western part of Minnesota, off toward Sauk Rapids. We were haying and harvesting on a farm there—hired out.

Q. Who was with you at that time?

A. Well, my brother Andrew, and one or more of the men that was along with us in our company across the ocean. But before we went up to Minnesota I was working in a stone quarry in Illinois, and my brother went up to St. Paul first to see how the country looked and what chances there was for work, etc., and he wrote back to us to come on.

(The district attorney moved to strike out the part of the answer as to what the brother wrote.)

Q. You worked in a stone quarry in Illinois?

A. Yes, sir; I worked there.

Q. And afterwards you went up to St. Paul, as you stated?

A. Yes.

Q. And then from there up to Chisago County?

A. Yes, sir.

Q. What positions have you held of a public nature, Mr. Wallmark? (Objected to as immaterial.)

A. Well, I have held several public offices there.

Q. State them, please.

A. Chairman, township supervisor, town clerk and town treasurer, and county auditor for Chisago County for about twenty years; I have been two sessions State senator, representing our district; in fact, I have had some public office during the whole time I have been up there.

Q. In '72 were you a delegate to a national convention?

(Objected to as immaterial and leading.)

A. Yes, sir; I attended the national convention at Philadelphia in 1872.

Q. From the State of Minnesota?

A. Yes, sir.

237 Q. Well, you entered a tract of land, did you not, up at Superior?

A. Yes, sir.

Q. Can you give the description?

A. I have forgotten the description; I don't believe I would be able to give the description; I don't think that I could even say the township, but I know it was in the northeast corner of the township somewheres.

Q. Was this the description: Lots 7, 8, and 9 and the northwest quarter of the northeast quarter of section 1, town 48, range 14?

A. I presume that is correct; I know it was in the northeast corner of the township and I think it was section one; as to the description of the land, I wouldn't be able to give the description.

Q. Where was it with reference to the river?

A. Well, there was a stream crossing it kind of diagonally.

Q. Part of it was fractional, was it?

A. Yes; there was some fractions, so I recollect; it was not a full quarter section.

Q. Is that the only tract of land you ever entered or purchased in Douglas County, Wisconsin?

A. Yes, sir—no, not the only one—it was in 1861 I and some others entered some pine school lands and engaged in logging.

Q. State lands?

A. Yes, sir; so these weren't the only ones; this land we entered in '61 or '62 that was State school lands, and we engaged in logging.

Q. This was the only Government land you ever entered?

A. Yes, sir.

Q. Well, what time did you quit the pineries in the spring of '55?

A. I think it was in March; I know we went down a little sooner than the others.

Q. Why?

A. Well, my brother got a bad cold, and so he was quite sick, and we went down.

Q. The pineries in which you worked were in Wisconsin?

A. Yes, sir.

Q. When did you first go to Superior?

A. That was in the spring of '55, I think; yes, it was later in the spring; my brother recovered and we went up there.

Q. Who did you go with?

A. Well, as near as I can recollect, my brother Andrew; I know that he was along, and one Olaf Westerland, and one Gustav Johnson, and Sven Magnussen.

Q. Are they all alive?

A. No, sir.

Q. Were you going to name others?

A. It seems to me there was one more, but I have forgot now.

Mr. SANBORN. Do you remember whether Israel Johnson went along?

A. I think there was one more.

238 Q. Was it Israel Johnson?

A. I think likely it was Israel Johnson, but I wouldn't say positive; but I rather think it was him.

Q. That makes five; were there any more?

A. Yes; I think there was either six or seven; there was a German among them; it seems to me that we were six Swedes, but I can't recollect who the other one was. I am not sure, though, that we might not have been more than five; I couldn't say positive, but it appeared to me that we were six and one German.

Q. Six Swedes and one German?

A. Yes, sir; I think we were that; I won't be positive whether we were five or six, but it seems to me we were six.

Q. Did you go together?

A. Yes, sir.

Q. Where did you start from?

A. We started from Taylor's Falls, Minnesota.

Q. That is in Chisago County, Minnesota, is it not?

A. Yes, sir.

Q. How long did it take you to go?

A. Well, there was no roads at that time. I think it took us three or four days—somewhere about that time.

Q. What was the object of your trip?

A. Well, we went up there to enter lands.

Q. How did you happen to go up there to enter land?

A. Well, we were a few young men that happened to meet down at Taylor's Falls a day, and we began to talk where we should go and take land, and then some one of us—I have forgot whether it might have been me or some one else—suggested that we should go up to Superior and see what the land looked like there.

Q. The vice-consul had spoken to you about going there?

(Objected to as leading, irrelevant, and immaterial.)

A. Yes, he spoke to us; his advice was fresh in my mind then, and we thought we would go up there and see what the land looked like and what the prospects were of getting work, and so on; and my brother and I and the others agreed to go up there and see how it looked, and if the land was such as we expected to find it, and if we found it as good as we expected, to make entries.

(The district attorney moved to strike out as immaterial the conversation had between the parties.)

Q. Well, you went to Superior; what did you do?

A. We went and looked over the land there and found the corners and located on some land, each of us, and built log shanties.

Q. How did you know how to find corners; had you had experience in finding corners?

A. Yes, sir; I had considerable—little experience in that;
239 settlers up around Chisago Lake there none of them knew anything about section lines and section corners and witness stakes, and I assisted a good many of them to find the lines, and so I knew a good deal about it; that was before I went up there.

Q. Well, state what you did after you got up there in order to select the lands—the examination you made and with whom?

A. Well, we found out the corners and then we went over to see whether there was any claim shanties, before picking out such quarter sections as we thought we would be likely to select, and as we looked over a quarter section we marked down on a map what was the name of the person; for instance, I would say I want this quarter section; then we would mark your name on that, and so I did; and we went on all together and looked over the land, one quarter section after another, and looked over that there were no claim shanties, and after we got through making that selection we went to work to build these log shanties on the land.

Q. The land had been surveyed by the United States?

A. Yes.

Q. Do you know how long before?

A. Well, I couldn't tell; it couldn't have been long before, because the marks were quite fresh; looked as though it might have been done within a couple of years before.

Q. State whether or not the lands you went over and selected had any improvements or claim shanties or other evidence of having been settled upon by others.

A. No, sir; there was no claim shanties on any of these we selected; but we saw one or two quarter sections where there was claim shanties

on. When we built our shanties we made them large enough to cook in them.

Q. Now, tell about what you did; for instance, you selected a tract?

A. Yes, sir.

Q. Now, what did you do on your tract?

A. Went to work and cleared off a piece of it and built a log shanty; it wasn't much of a shanty, of course; the logs were cut to go in shape and built up high enough for a man to stand straight in and then we made some roofs of poles and we cut some poles and made a fence around probably quarter of an acre or so.

Q. Did you do any cultivation?

A. Well, there was no cultivation except by hoeing. We hoed in corn and potatoes.

Q. You planted some?

A. Yes, sir; we planted corn and potatoes on each claim.

Q. Was a shanty built on each of the five claims?

A. Yes, sir; I think so; I wouldn't say positive that I was on all of the claims after the shanties were built, but I was on two or of them. But it was right up in the wilderness there, so two and two stuck together; for instance, two of us would sleep in one shanty one night and
240 then the next night we would sleep in the next shanty, and so on, shifting about.

Q. How many weeks did you stay there?

A. I wouldn't say positive, but somewheres about two or three weeks that we stayed.

Q. On the land?

A. Yes, sir.

Q. Sleeping in the shanties?

A. Yes, sir.

Q. Did you at any time go to the land office to prove up your claim?

A. Yes, sir; after we had stayed up there for two or three weeks we went home; we lived with a family at Chisago Lake—I and my brother—and we had our things there, our clothing and our chests, and we went home and from there we went down to Willow River, I think it was called then.

Q. That is in St. Croix County, Wisconsin?

A. Yes, sir.

Q. Now Hudson?

A. Yes, sir.

Q. Was the United States district land office situated there at that time?

A. Yes, sir.

Q. For this district in which these lands were situated?

A. Yes.

Q. Well, what did you do after you got to Hudson?

A. Well, there was my brother Andrew, and, if I am not mistaken, all that made claims up there went down at the time I went down.

Q. Did all who went up with you make claims?

A. No, I think not; I don't think they all made claims; one Sven Magnussen was with us; I don't think he made a claim; there was a German along with us and I don't think he made a claim; I think they went up to find work or something. If Israel Johnson was along I don't

recollect, but I can't say whether he made a claim or not; I have no recollection of that.

Q. State whether or not those improvements that you made on your land were, as far as you know, in a general way, similar to the improvements made on public lands at that day.

(Objected to as incompetent and immaterial.)

A. They were such as were then generally made on preemption claims.

Q. Well, what did you do at Hudson?

A. We went into the land office and the papers were made out from the descriptions we gave, and the papers were read to us and we signed the papers at the land office, and we were witnesses one for another, of those that went up there, signed as witnesses.

Q. You made an affidavit, did you, as to your settlement?

A. Yes, sir.

Q. And each made affidavit?

A. I think so.

Q. Have you any recollection who you were witness for?

A. I am not sure, but it appears to me that it was Gustav
241 Johnson; I think it was him; I won't be positive, but I think it was Gustav Johnson that I signed for.

Q. Did you make payment for your land at that time to the land office?

A. Yes, sir.

Q. And got the certificate?

A. Yes, sir.

Q. Before we went, were you the owner of 320 acres of land?

A. No, sir.

Q. Had you made any other preemption?

A. No, sir.

Q. You had made settlement in person upon the tract of land you entered, had you?

(Objected to as leading.)

A. Yes, sir.

Q. State whether the affidavit to which you made oath was in its statements true.

(Objected to as examining the witness on a paper which is not before him.)

Q. State whether or not you had settled upon or improved the land to sell the same on speculation?

(Objection to as calling for a conclusion.)

A. No, sir.

Q. When you entered the land what was your intention as to it?

A. Well, our intention was——

Mr. BRIGGS. Your intention.

A. Well, yes; my intention was to improve the land and go up there and get work at Superior and then earn money so as to be able to make improvement there, more permanent improvement, and so on, and keep it.

Q. Were you married at that time?

A. No, sir; I was not married at that time.

Q. Had you at the time you settled upon the land or at any time up to the date you proved up at Hudson, any agreement of any sort with anybody under which they were to have any interest in the land?

A. None whatever; no, sir.

Q. Prior to your going to Superior had you ever seen Mr. Stinson?

A. No, sir; not to my knowledge.

Q. You never had had any talk with him about going to Superior to enter land?

A. No, sir.

Q. Nor any correspondence?

A. No, sir; I never had.

Q. Had you at any time met him before you proved up?

A. No, sir; I think not; I am quite positive that I had not.

Q. Had you at any time before you proved up and paid your money any conversation or correspondence or agreement of any sort with Mr. Stinson or anyone representing him in relation to this land?

A. Before I proved up?

242 Q. Yes, sir.

A. No, sir.

Q. State whether or not this land was entered solely for your own benefit.

(Objected to as calling for a conclusion.)

A. Yes, sir.

Q. Did you ever have any talk with any person or any correspondence with any person about the sale of this land or any part of it prior to the time you had proved up and obtained your certificate?

A. No, sir; never.

Q. When did you sell the land?

A. I wouldn't be able to state the date.

Q. Well, did you sell it after you had proved up? Did you sell it at Hudson after you had proved up?

A. I sold it some time after I had proved up, but how soon after I don't recollect; I think, however, it was shortly after I proved up that I sold it.

Q. Prior to your proving up had you had any negotiations with Mr. Stinson or anyone representing him for the purchase of this land, or the sale of this land to him?

A. No, sir.

Q. Do you remember what you sold it for?

A. I can't recollect how much it was; it seems to me it was something less than $300, I think; I don't think I got quite $300 for the land; I am not sure how much less than $300, but it was something less than $300 that I got for it.

Q. Do you remember what you paid for it?

A. Well, I think I paid in the neighborhood of $170 or $175, or something like that.

Q. What price an acre?

A. $1.25 an acre.

Q. Do you remember how many acres there were?

A. Something between 140 and 145; something like that; there was a stream running diagonally through the corner of it and taking out part of it, and it was fractions, if I recollect right, and it was less than 160 acres, I recollect; it was some 15 or 16 acres less than 160, I recollect.

Q. Do you know what such land was worth in the market at that time?

A. No; I had no particular idea how much it was worth.

Q. Well, the market price of the land?

A. There was no particular price of land; I don't recollect that I heard of anyone selling any land in that neighborhood, so I don't think I had any particular idea of what the value was, the market value.

Q. Whose money did you pay for the land to the land office?

A. I paid my own money for it.

Q. Was any of the money which you paid for the land furnished you by Mr. Stinson or anyone representing him?

A. No, sir.

Q. Do you know anything about the purposes of the other four of your crowd who entered land, as to going back there?

243 A. No; I can't say that I knew their purpose any further than they went up there and entered land, and as far as I understood their intention was to improve the land the same as I did.

(Objection made to the witness stating what he understood.)

WITNESS. I never heard any of them mention that they were going to sell them or anything of that kind.

Q. State whether, to your knowledge, there was any agreement or understanding among any of these men for the sale of their land to Stinson or anyone else, or any interest in it, prior to the time you proved up at Hudson.

A. There was no such understanding, to my knowledge.

Mr. BRIGGS. You don't pretend to know about it, do you, Mr. Wallmark?

A. Well, no; only this far, that they never uttered a word about selling or anything of that kind; of course, I won't pretend to testify to the intentions of them.

Q. You were together daily?

A. Yes; both going up and coming down and during the time we were on the land, except some days two or three of us would go into Superior to buy a little provisions and such things as we needed.

Q. Have you stated fully the reasons which induced you to go to Superior to enter the land?

A. I think I have.

Q. State whether or not you were solicited by any person to go there to enter land.

A. No; I was not solicited by anyone.

Q. Or whether in entering the land you acted under the direction of any person.

A. No, sir.

Q. No one whatever?

A. No, sir.

Cross-examined by Mr. BRIGGS:

Q. In what month did you land in this country in 1854?

A. It was the latter part of May.

Q. Do you remember who accompanied you on your voyage over the ocean?

A. Well, there was my brother Andrew Wallmark and several others.

Q. These same ones that afterwards went with you to Superior?

A. No, sir; none except my brother.

Q. None except your brother was with you when you came over?
A. No, sir.
Q. What means did you have of your own at the time of your coming to this country?
A. I had some money that we had after paying our ticket over; I had some money of my own after I got over to this country.
Q. How much?
A. I don't recollect how much I had; probably forty or fifty dollars.
244 Q. Do you know how much money Andrew had?
A. I couldn't say exactly; I think he had somewheres about the same amount, probably; it might differ a few dollars perhaps as to the amount.
Q. What was the name of the Swedish consul at Chicago with whom you had a talk?
A. If I can recollect right, his name was Habicht, but I am not sure; as to his name I would not be positive.
Q. Do you know whether he is now living or dead?
A. I do not.
Q. You never saw him except this one time in Chicago, when you had your talk with him?
A. No, sir; I never saw him before or after that.
Q. Well, how much means did you have left when you got up into Minnesota?
A. I had increased my means somewhat; I was working in a stone quarry down in Illinois for some time.
Q. How long did you work in that stone quarry?
A. Well, it was not over probably a month and a half.
Q. Do you remember what rate of wages you received there?
A. If I recollect right, I had $30 a month.
Q. You landed in New York, did you?
A. Yes, sir.
Q. How did you come west from New York.
A. Well, we came part of the way by steamer and part by wagon; we went by steamer up to Albany, if I recollect right, and then came by way of cattle cars west to Chicago.
Q. Weren't your expenses from New York out West more than what you earned at the stone quarry?
A. No; it didn't amount to so much; the fare was very low; I have forgotten how much it was, but we had emigrant fare.
Q. Well, you couldn't have increased your means very much by the time you reached Minnesota?
A. No; it couldn't be very much.
Q. What was the name of the family you went to in Chicago County, Minnesota?
A. Charles Peterson's.
Q. Is he living?
A. I couldn't say; I have heard that he was dead; he moved away from there some twenty years ago; he moved down towards Lakeland, Washington County, Minnesota, I understood; I never saw him after he moved away from there.

Q. Did he have any children at that time?
A. No, sir; no children.
Q. His family consisted of himself and his wife?
A. Of him and his wife; yes, sir.
Q. And you say that in the fall of '54, or winter, you went into the pineries to work?
A. Well, I was going to say that we didn't move up from Illinois to Chisago Lake at once; we moved up to St. Paul first, and we were working there and went up to Sauk Rapids, up the Mississippi, and worked in the harvest and haying for a time up there.
245 Q. Do you remember what wages you received when you were harvesting?
A. We had, I think, two dollars a day in harvest and a little less during haying; my brother and I had that each.
Q. Well, then you went out into the pineries in the winter, did you?
A. Yes, sir.
Q. And who went with you in the pineries?
A. Well, there was my brother and I, and some other men from Chisago Lake were there.
Q. Do you remember their names?
A. Yes; there was one Charles Johnson. I don't recollect if there was any more that I knew that was working in that camp.
Q. Prior to the time when you entered these lands, Mr. Wallmark, were you acquanted with Andreas Swenson?
A. Yes, sir; I knew him.
Q. Prior to the time when you went up to Superior to enter these lands?
A. Yes, sir; I knew him before that.
Q. You knew Peter Norrell, didn't you?
A. I am not certain whether I knew him or not; but I rather think I did.
Q. And you knew Lorenz Johnson, didn't you?
A. I wouldn't be positive. You see, we came up to Chisago Lake in December, '54, and were working in the pineries during the winter of '54 and 5, and in the spring of '55 we went up and made entries of land, and we didn't stay around the lake a great deal of time.
Q. You remember that you knew Lorenz Johnson back at that time?
A. Well, I wouldn't be positive whether I did know him at that time or not.
Q. Well, what is your best recollection, Mr. Wallmark?
A. Well, it is impossible for me to say.
Q. You have become acquainted with him at some time, haven't you?
A. Yes, sir.
Q. Did you know John Johnson at that time?
A. Well, there was several John Johnsons; there was a dozen or more of them up there, but I think I knew that same John Johnson.
Q. John Johnson who made entry of lands up near Superior?
A. Yes; I think I had seen him, that I had met him.
Q. Well, you knew them both, didn't you, Mr. Wallmark?
A. I think not at that time.
Q. Well, which one did you know?

A. I knew this John Johnson that—I hardly know how to distinguish between the two.

Mr. BASHFORD. Was it the one that is living now?

A. Yes, sir; I knew him.

Q. Is he the one that entered some lands up there at Superior?

A. I have no knowledge of his entering any lands there.

Q. Well, what is your information on the subject?

246 A. Well, I think I have heard that he entered some lands. I think I have heard that; yes, sir.

Q. Well, did you know that John Johnson who had a claim out in Chisago County, Minnesota?

A. I don't know whether he had a claim at that time or not; I couldn't say as to that.

Q. But you knew a John Johnson that did have a claim in Chisago County, Minnesota?

A. Yes, sir.

Q. Well, you don't know of more than one John Johnson that had a claim in Chisago County, Minnesota?

A. Well, I think I knew a dozen of them.

Q. That had claims there?

A. Yes, sir.

Q. Did you know a Sven Larson who made an entry of lands up near Superior?

A. I knew Sven Larson; but whether he made entry up there I don't know anything about him making an entry up there, but I think I heard afterwards that he had made an entry.

Q. What was your knowledge of the English language at the time you arrived in this country, Mr. Wallmark?

A. Well, it was not very perfect at all.

Q. Could you speak it at all before you came to this country?

A. Yes, sir; I had learned some English in Sweden.

Q. Could you converse intelligently with anyone when you reached this country, in English?

A. I wouldn't say hardly that I could converse intelligently.

Mr. BASHFORD. You could make yourself understood, could you?

A. Yes, sir; I could make myself understood. Of course there was words that I couldn't express.

Q. Could you carry on any ordinary conversation in English?

A. Well, I think not; no, I don't think I could. Of course to talk about the conversation that we are talking now, of course I couldn't do that; but if I wanted to buy anything, or ask my way, or anything, and talk about some common subjects, I could do that.

Q. Well, when did you acquire an ordinary speaking knowledge of the English language?

A. Well, I don't know if I have done that yet.

Q. Oh, yes; we admit that.

A. Well, I was working out among the Americans and I was clerking in a store for an American, and at times we didn't have much to do he had me sit and read the newspapers for him and he sat and corrected me, and in that way I had a pretty good schooling.

Q. Well, when did you clerk in that store?

A. Well, that was in 1856.

Q. That was after you made this entry of lands?

A. Yes, sir; that was after; but I worked down in the stone
247 quarry, worked among Americans there, and worked for a farmer who was an American and worked in the pineries among Americans.

Q. But you worked in company with persons of your own nationality in the pineries?

A. Yes; there was some of them there.

Q. What time did you say you quit the pineries?

A. It was some time in March.

Q. What were your means in March, '55; what did they consist of? How much money did you have in the spring of '55?

A. I couldn't say exactly how much we had; I had saved up a little; I had been working; I couldn't say exactly how much we had.

Q. Well, would it be in the neighborhood of $100?

A. Well, I would have had more than $100; I had more than $100, but I don't suppose that I had ever a couple of hundred dollars.

Q. Did you have $150?

A. I might not have had that much; I don't know.

Q. What wages had you been receiving in the pineries?

A. In the pineries we had $26 a month, I think it was.

Mr. BASHFORD. I suppose you had your board where you worked, besides your wages?

A. Yes, sir.

Q. When was it you went to Taylor's Falls; what time of the year?

A. Prior to going to Superior?

Q. Yes.

A. It seems to me it was in the first part of May, I think; it might have been later.

Q. And what was the occasion of your going to Taylor's Falls?

A. Well, that was the only place where we done any trading, where we could buy our necessaries that we needed, and the whole settlement, whenever they wanted to buy anything, would go to Taylor's Falls.

Q. And how did you say the question of entering Government lands first arose—first presented itself to you?

A. Well, we were a whole lot of young men up around the lake there and we were talking about entering lands.

Q. Weren't there any lands to enter over in Minnesota, in Chisago County?

A. Oh, yes; there were lands that weren't taken up then.

Q. Weren't there vacant lands then?

A. Yes; but the lands nearest the lake were taken up.

Q. But there were vacant lands over in Chisago County?

A. Yes, sir; but they were these sand barrens out west of the lake and very poor lands and at that time scarcely anybody wanted them.

Q. Did you make any investigation as to what Government lands were open in Minnesota anywhere around there before you went
248 up to Superior?

A. Yes, sir; we knew pretty well what lands were vacant in the immediate neighborhood of us.

Q. Well, did you make any inquiry as to lands, further than in the immediate neighborhood?

A. No; I can't say that we did; don't think we did.

Q. Well, who was the person that first suggested to you your making an entry of lands up near Superior?

A. Well, the first person that made any mention of Superior at all was the Swedish and Norwegian vice-consul.

Q. Oh, no; at Taylor's Falls, I mean?

A. Well, that I can't really say; it might have been myself; we were talking together up there about seeking a place where work was plenty and at good wages and to take land at the same time, where we could select land and be where labor was plenty and at good wages, so that we could improve the land, and when we didn't happen to have work at a time we could work on the land, and then when labor was plenty we could earn money.

Q. Earn money up in Superior?

A. Yes, sir.

Q. You knew, did you not, that some of your countrymen had entered lands up in Superior the year before; you knew that at that time, didn't you, Mr. Wallmark?

A. I don't know whether I knew it at that time or not.

Q. Well, what is your recollection on it?

A. Well, I have no recollection of knowing anything about that; I might have known something about it and I might not, but I have no recollection now that I knew anything about it at that time.

Q. Well, you can't swear that you didn't know it, can you?

A. No; and I can't swear that I did.

Q. Did any of these persons—Andrew Svenson, Peter Norell, Lorenz Johnson, the John Johnson who obtained entry near Superior, or Sven Larson—live near you in Minnesota?

A. None of them lived within five or six miles.

Q. Well, five or six miles wasn't a very long way in those times?

A. Well, it was when there wasn't any roads through the wild woods.

Q. Well, you visited back and fourth didn't you among your countrymen up there?

A. Well, our road to Taylor's Falls was leading east; but they were scattered all through the woods and most generally when we did meet it was at Taylor's Falls, or sometimes at church.

Q. Well, what do you say as to meeting any of these men, whose names I have given you, in the winter of '54 and '55? Were any of them out in the pineries with you?

A. No, sir; none of them except my brother.

249 Q. Well, you can't swear that you didn't know, at the time you were at Taylor's Falls, that these men or some of them had entered lands up at Superior the year before?

A. I can't swear to that.

Q. You learned that they had obtained such entries at some time?

A. Yes, sir.

Q. You may have seen these men in the fall of '54 or in the winter and spring of '55—you may have seen them or some of them?

A. I might have seen them, possibly; I can't say; I might possibly have seen them.

Q. Did you at any time learn that these five men, whose names I have given you, had sold lands that they had gotten from the Goverment at Superior?

A. No, sir.

Q. You have never learned that?

A. No, sir; not until long afterwards.

Q. Until long after you had sold?

A. Yes, sir.

Q. How did you go from Taylor's Falls to Superior?

A. We went afoot.

Q. You were unmarried at the time?

A. Yes, sir.

Q. How long did it take you going up there?

A. I wouldn't be positive, but it appears to me it was about three days to go up there.

Q. Do you remember how much money you had when you got to Superior, or isn't that fresh in your mind?

A. Well, I can't say how much I had; I don't suppose I took much money along with me up there.

Q. Do you know where your money was that you left behind?

A. It was in our trunks.

Q. You didn't believe in banks in those days?

A. Well, there was scarcely any banks in the country then.

Q. You hadn't earned any money since you came out of the pineries that spring until you went up to Superior?

A. No; I don't think I had.

Q. You came out of the pineries early in March and went up to Superior in May, as I recollect your testimony?

A. Yes.

Q. Did you work at anything when you got to Superior; obtain any work there?

A. No, sir; not before we entered the lands.

Q. Well, did you at any time while you were up there at Superior work on the streets?

A. No, sir; I did not.

Q. Did you do any work at Superior off of your claim for which you obtained pay?

A. No, sir.

Q. Do you know of any others of the party that went up to Superior with you working upon the streets there?

A. I couldn't say.

250 Q. What is your recollection on the subject?

A. Well, as far as my recollection is, I don't think that they did.

Q. Do you remember whether or not Israel Johnson worked on the streets?

A. I don't recollect if he did.

Q. Well, what was the first step that you took with reference to selecting a claim when you got up there?

A. Well, when we first got up there we first rigged up a little camp——

Q. Not what "we" did, Mr. Wallmark; I am asking what you did. What you did with reference to selecting a claim?

A. When we were going up there we carried our provisions along and half a day's time before we got there we were looking over the land along the trail, until we got there, until we got in sight of the lake, and then we struck a camp and looked around the lands there until we found a township corner.

Q. I want to get at just what you did with reference to selecting a claim; you can tell what you did.

A. I didn't do anything separate; I didn't go away all by myself to look at land; we were all together; that is the reason I say "we;" we looked over until we found a township corner, and then we located that on a map to see where it was.

Q. Did you have a map with you?

A. Yes, sir.

Q. Where did you get that map?

A. I don't know how that was procured.

Q. What sort of a map?

A. It was a regular Government map, I think, one of these common township plats. It was one of these regular Congressional township plats.

Q. You don't know where that map came from?

A. No, sir.

Q. Do you remember who had it?

A. I think Gustav Johnson had it, if I recollect right.

Q. Now, the persons whose names you gave as being with you, as I understand it, were your brother Andrew, Olaf Westerland, Gustav Johnson, Sven Magnussen, and Israel Johnson?

A. Well, I wouldn't say positive that Israel Johnson was along, but I think he was.

Q. You have stated that that was your recollection on it, haven't you?

A. I wouldn't be positive that he was; I have no clear recollection about that.

Q. Was anyone else along, of your nationality, except those five?

A. No, sir; no one that I can recollect.

Q. Do you remember the name of the German?

A. I do not.

Q. What became of him?

A. I don't know; when we got up there towards Duluth I think he went into the town; at least he parted from us; when we got up
251 pretty close to Superior he parted from us, and I supposed that he went into Superior; I don't know what became of him.

Q. You five stuck together?

A. Yes, sir.

Q. Are you certain that there was no one else with you except those whose names you have given?

A. If there was anyone it was probably Israel Johnson, but it appears to me that we were six.

Mr. SPOONER. Six Swedes?

A. Yes; six Swedes.

Q. Well, you are certain, are you, that there was no one else other than those?

A. Yes, sir; I am quite certain of that.

Q. Certain of that?

A. Yes, sir.

Q. You don't remember of your own knowledge the description of the land that you entered?

A. I knew the description, but it is so long since, it has passed my mind; it is pretty hard to keep in mind the description of a piece of land so long.

Q. Well, where did you get the description of yonr piece of land from at that time?

A. We got it from the map together with the section corner; we went up to the corner of the section; there is four bearing trees for every section corner and they are numbered and marked, so it is easy when you see the witness trees to locate on the map and know where you are, and that is the way we found the precise location.

Q. Well, now, part of the lands you entered were lots, were they not?

A. They were fractions of lots.

Q. Well, now, were those described on that map?

A. Yes, sir; I think they were. I am not sure, but I think they were. I know the stream was running in a kind of diagonal shape through it there and the lines of the Government survey was quite plain then; we could follow them wherever there was any section lines.

Q. Well, now, you don't remember, do you, whether or not these lots were described on that map?

A. I couldn't say positive, but I think they were.

Q. And how long were you upon this claim?

A. It was somewheres about two or three weeks. I couldn't say positive, but it was some two or three weeks.

Q. Was there any friction in your party as to what claims you should take?

A. There was no particular friction; there were some quarter sections that we found were a little better than others, but still we didn't have no particular quarrel—no quarrel over it much.

Q. Now, just what work or improvements did you do upon your claims? Just what did you do with your land?

A. Well, I built a log shanty.

Q. How big a one?

A. Well, it wasn't very big; it might have been eight by six, or something like that.

Q. Roofed over?

Q. Yes; roofed over with poles.

252 Q. Well, what else did you do?

A. Cut an opening for a door and a window in it and then we rigged up a bed of poles and a cot in it, and cut some poles and made a fence around a little piece there, cleared off.

Q. How much land did you clear?

A. Oh, it wasn't but a little piece; probably a quarter of an acre.

Q. Did you clear as much as a quarter of an acre?
A. Yes, sir.
Q. Well, you had in mind that what you were doing was temporary, didn't you?
A. Well, yes; I had in mind that that was temporary and my intention was not to do much more than what was necessary to make the claim good and afterwards to make more improvements.
Q. If you wanted to come and make more improvements.
Mr. BASHFORD. He says what his intention was.
Q. How did you put in your time during the two or three weeks that you were up there?
A. Well, it took pretty much our time to cut these logs; we had no other means than to carry them on the shoulder; we cut them and kind of dovetailed them together and carried poles for roofs, and carried poles on our shoulders for our fence.
Q. Did you make any inquiries while you were there to see what the opportunities were for work at Superior?
A. Yes, sir.
Q. Plenty of opportunities, weren't there?
A. Yes, there was good opportunities.
Q. Paying pretty good wages for work, weren't they?
A. Yes, sir.
Q. No trouble in getting employment up there, if you had wanted to, was there?
A. No, I suppose not; there was no persons idle there.
Q. Did you all go to Willow River from Superior together, the sam e party that went up there in the first place?
A. I wouldn't say positive all of them went up; I rather think they did.
Q. You think they all went together. Who was it suggested going down to prove up?
A. Well, I don't know who suggested that; that we knew before.
Q. How had you learned that?
A. Well, we knew that from the fact that many claims was taken up around Chisago Lake; it was a regular occurrence for persons to go and take preemptions at that time and make proof of claims; so we knew.
Q. Well, did you go direct from Superior to Willow River?
A. No, sir; we went home where we lodged, up to the Lake, before we went down to Hudson.
Q. Did you get your money when you went home?
A. Yes, sir.
Q. Do you remember how much you got?
A. I can't say exactly how much I got; how much I had then.
253 Q. Well, what is your best recollection of it?
A. Well, I couldn't say positively how much. I might have had $150 and I might have had a little more or a little less; I had in the neighborhood of that somewheres.
Q. Do you know what the means of the others were in the party?
A. Yes, sir.
Q. How much money did your brother Andrew have?
A. Well, he had probably as much as that or more.

Q. You are sure about that, are you?
A. Yes, sir. We knew pretty well how much each one of us had at that time.
Q. You are sure Andrew had as much money as you did?
A. Yes, sir; I think he had about that.
Q. And that you had about the same as he did?
A. Yes, sir; it might have varied a few dollars.
Q. Well, what day did you get to Willow River?
A. That I don't recollect—the exact date.
Q. What month?
A. It was in May, I think.

Recess until 2 p. m.

WITNESS. I desire to correct my last answer. I said I thought it was in May, but I recollect that the vegetation was quite forward; I am satisfied it was in June.

Q. Did Mr. Bashford suggest the month to you during the intermission—one of the attorneys?
A. No, sir.
Q. No suggestion made to you?
A. No, sir.
Q. Do you remember the day of the month that you got down there?
A. No; I couldn't say the day.
Q. I want to return for a moment to the question of the improvements on your claim. As I understood you, the improvements, as you term them, that you made on your tract were very much the same character as those made by the others of your party?
A. Yes, sir; so far as I saw them.
Q. They were all of about the same character?
A. Yes, sir; just about the same; little log houses with a door opening, and there would be a little window, and the size was about the same.
Q. Did your log house have any wooden door to it?
A. It had an opening for a door, but there was no door on it.
Q. Was there any glass in the windows?
A. No, sir; there was no glass in them; just an opening.
Q. What furniture did you have in yours?
A. Only rafters nailed up for a kind of a bunk to sleep on.
Q. That is all there was?
A. Yes, sir; that is all there was.
Q. You didn't attempt to cultivate the ground at all, did you; to plant anything?
A. Well, we planted some potatoes and corn.
254 Q. I don't mean "we;" I mean how much did you plant?
A. I didn't measure it; it might have been a few rods square.
Q. Put up any fence?
A. Yes, sir; we cut some rails.
Q. No, don't say "we;" I want to get at your claim particularly.
A. I cut some rails.
Q. Did you put them up in a form of a fence?
A. Yes.
Q. Where did you run the fence?
A. I ran it around a little clearing that I had planted.

Q. Any danger of cattle trespassing around the clearing?
A. No; I don't think so.
Q. What did you put up the fence around the clearing for?
A. Well, I did it because I thought it was required that it should be done.
Q. Did you sleep in your hut nights?
A. Yes; I don't think I slept there every night; we shifted about; two slept together one night, and then we went to another to sleep together; it was a kind of wilderness up there.
Q. You didn't intend to do any more than you had to on the claim?
A. No; I didn't intend to do more than what was required to get my entry.
Mr. BRIGGS. At the time.
A. Well, I didn't intend to do any more than what was necessary to get my entry.
Q. What did you take from Taylor's Falls in the way of supplies when you went up there—you yourself—what did you get?
A. I had some tea, pork, crackers, sugar.
Q. What you had you carried on your back, did you?
A. Yes, sir; and a pair of blankets I think I had.
Q. Did you buy those things yourself?
A. Yes, sir.
Q. Did the others, so far as you know, buy the things that they took with them?
A. As far as I know, they did; I don't know whether they paid for them; at any rate they got them.
Q. Did you buy anything at Superior?
A. I don't recollect, but it appears to me that we clubbed together and bought a sack of flour there; the flour, I think, was bought by us collectively; we clubbed together and bought some flour.
Q. Now, at any time before your going to Hudson, was there any talk that you heard among any of your party concerning James Stinson?
A. None that I know of; none that I heard; no, sir.
Q. Is your recollection positive?
A. Yes, sir.
Q. Do you swear that he was not discussed in any way, or in connection with your entries in any way?
A. I swear that I can't recollect that there was anything said——
(Question repeated.)
255 Q. Prior to your going to Hudson?
A. Yes, sir.
Q. You swear to that?
A. Yes, sir.
Q. Absolutely sure about it?
A. I am sure that he was not mentioned in any way in connection with my entry.
Q. Well, his name. Read the question. (Question repeated.) I ask if he was discussed; if you heard his name in anyway prior to your going to Hudson?

A. It is very hard to swear to that positively; he might have been mentioned; I don't recollect it; I can't recollect that he was not mentioned; but I think I can swear positively that he was not mentioned.

Q. Well, do you swear positively that he was not mentioned?

A. To my recollection he was not mentioned.

Q. Do you swear positively that his name was not mentioned; that you didn't hear of him before your going to Hudson?

A. Yes, sir; I swear positively.

Q. Never heard his name?

A. No, sir; not mentioned in connection with that entry.

Q. Not in connection—did you ever hear his name before you went to Hudson?

A. I can't recollect that I ever heard his name before I went to Hudson.

Q. You are willing to swear that you never did hear it?

A. No; I won't swear to that; I might have heard it.

Q. Well, that is what we have been trying to get at. Well, now, did all of your party go back to Chisago County before you went to Hudson?

A. Yes, sir; I think they did, as near as I can recollect.

Q. They all went back there before they went down to Hudson?

A. I think they did; I am not sure as to that.

Q. You went back?

A. Yes, sir; I went back and my brother went back.

Q. Why didn't you go direct to Hudson if you were going to prove up your land?

A. Well, we had our money up there that we had to go home for, and our clothes were in bad shape, and we had to get home to get clean clothes on, and one thing and another.

Mr. SPOONER. It wasn't out of your way very much, was it?

A. No; it wasn't much out of our way.

Q. You got down to Hudson some time in June, you say?

A. Yes.

Q. Who made out your affidavit and application for the land—your declaratory statement?

A. The affidavit was made out by one of the land officers, I think.

Q. And your declaratory statement?

A. And it was read to me and I signed it; swore to it.

Q. Had you brought a description of your land with you from Superior?

A. Yes, sir; we had taken the description from the map, as we had mapped it there on each quarter that we entered.

256 Q. Could you read English at the time you were up to Superior?

A. Yes; I could read some; I got it so that could read the descriptions of land well enough, and read and wrote, of course, some.

Q. You could read descriptions of land at that time?

A. Oh, yes; I had done a good deal of that.

Q. Well, could any of the rest of the party?

A. I think most of them could; I don't think some of them could; for instance, Sven Magnussen—I don't think he could; he was an old man, and I don't think he could; but most of them, I think, as a general thing, could read the descriptions and understand them.

Q. To whom did you pay your fees; whom did you pay the money to?
A. To the land officers.
Q. Do you remember how much you paid him?
A. I can't say exactly as to the dollar; it was some $170 or $175; something like that, I think.
Q. And you gave the officers the description of the land, so that they could put it in for you?
A. Yes, sir.
Q. This description you had got, as I understand it, from the map, compared with the lines of the country as you found it up there?
A. Yes, sir.
Q. A strange country that you had never been in before?
A. Yes, sir.
Q. Was it a wilderness out there where you were?
A. Well, of course, there was no settlement there.
Q. No settlements anywhere near there?
A. No.
Q. You had made out these descriptions from the map and what knowledge you had acquired from the land up there?
A. Yes, sir; we first found out the township corners——
Q. Well, now, it was here at Hudson that you met Ms. Stinson for the first time, was it?
A. That was the first time that I ever saw him.
Q. Who introduced you to him?
A. Nobody introduced him that I can recollect.
Q. You didn't know him before, did you?
A. No, sir.
Q. Well, how did you get acquainted with him?
A. Well, someone with us there said, There is Mr. Stinson; that is all I knew about it—that is Mr. Stinson, or something to that effect.
Q. Well, how did you come to sell your land to him?
A. Well, he came and asked if we had entered some lands up at Superior, and we told him we had.
Q. Well, how could he know that you had entered some lands up at Superior?
A. Well, I don't know; he probably found out in the land office; I don't know.
257 Q. Where did your talk with Mr. Stinson occur; where did it take place?
A. It was outside the land office there somewheres.
Q. Right after you had made your entry?
A. Well, not immediately after.
Q. While you were making your entry, wasn't it?
A. No, sir; it was after we had left the land office—after we had gone out of the land office and had the certificate.
Q. You were all together when you met him?
A. I am not sure whether we were all together when we met him—yes, we were several of us there.
Q. He came up to you and asked if you had entered some land up to Superior?

A. If I recollect, we had gone in and bought something to eat, and were sitting in the shade down towards the river eating when Mr. Stinson came.

Q. Were you in the land office when the others paid their fees?

A. I was in there while one or two paid them, I think.

Q. Weren't you all together until you got your business closed up?

A. We wern't all in the office at a time.

Q. But you had all got your business in the land office fixed up before you met Mr. Stinson, as near as you can recollect?

A. As near as I can recollect, I think we had; I don't know. There may have been some of them in the office when Mr. Stinson came down where we were.

Q. Well, that is your best recollection?

A. Yes, sir.

Q. Now state the conversation with Mr. Stinson.

A. Well, he opened the conversation there, asking us if we had made some entries, and asking to see our entry certificates down there, and we showed him. I showed it to him and he asked if I would sell the claim; I don't recollect what answer I gave him, but at any rate the bargain was not made for quite a while after. I think he went and saw some of the other boys sitting there and talked to them; I think he sat down and talked first to one and then to another.

Q. Who else did you go and ask about the value of your land?

A. Who I asked?

Q. Yes.

A. Oh, I didn't ask anyone.

Q. Now go on and state your conversation with Mr. Stinson.

A. Well, Stinson finally asked if I would sell it, and I told him that I might sell it if I got a satisfactory consideration for it. And he asked how much I would take, but I forget how much I asked for it; at any rate he wouldn't pay as much as I asked for it; and he went around to the others, and I can't recollect if the bargain was closed right there or not or whether it was done afterwards.

Q. Well, it was closed that same day, wasn't it?

A. I rather think it was.

258 Q. Oh, your deed is dated that day?

Mr. SPOONER. He might refresh his recollection from the deed, but it isn't strange that his recollection should not be very bright on that.

WITNESS. I rather think it was.

Q. Well, what time of the day was it that the bargain was closed, if you remember anything about it?

A. Well, it was pretty late towards the evening, because we only went on our way home as far as Stillwater that day, and that is only about seven miles.

Q. Well, your deed to Mr. Stinson was drawn up in the daytime, wasn't it? Didn't you all go to some office to have your deeds drawn up?

A. I don't know whether the others did or not.

Q. Didn't the same person draw the deeds for all of you?

A. I can't say that. I think we went in to a justice or some one there to draw the deed. I don't recollect the transaction. I must confess that I won't swear positive as to who made them out. It is so long since, I have forgotten about it.

Q. Do you remember whether it was a Mr. Moffatt that made out your papers?
A. I couldn't recollect the name.
Q. You don't recollect the name?
A. No, sir.
Q. And you don't recollect whether you were all together when the deeds were made out?
A. No; I can't recollect that either; I don't think we were.
Q. You don't think you were together?
A. No, sir; I don't think we were; I would*n*'t say positively as to that, though. There might have been three or four of us or two or three of us.
Q. You might have been all together when the deeds were made out?
A. No; I don't think we were all.
Q. How much did Mr. Stinson pay you in money for this claim?
A. Well, if my recollection serves me, I asked something over $300 for it.
Q. Now, when you testified this mor*a*ing, didn't you state that you got something under $300 for that?
A. I said I asked that.
Q. I asked how much money he paid you for your deed?
A. He paid me something less than $300; I know he beat me down some.
Q. Was it $250?
A. It was more than that.
Q. $275?
A. Something about that, I think.
Q. About $275?
A. I think something about that.
Q. And you had already paid in about $175 to get the land?
A. Yes, sir.
Q. Did you pay in that money to the land office yourself?
A. Yes, sir.
Q. Did you see Mr. Stinson pay in any money to the land office for any of the boys?
A. No; I did not.
259 Q. You swear that he didn't pay in those fees for you as a part of this deal, do you?
A. Yes, sir; and I say that I didn't see Mr. Stinson in the land office when I or any of the others were in there.
Q. That made about $100 that you got for this claim?
A. Yes, sir.
Q. That is about what you got for it?
A. Yes, sir; and that was a big pile of money them days.
Q. You hadn't made any effort to sell it to anybody else?
A. No, sir.
Q. Hadn't asked anybody else what they thought the value was?
A. No, sir.
Q. Sold it to Mr. Stinson the same day that you got your final certificate?
A. Yes, sir.
Q. It was a good claim, wasn't it?

A. Well, it was a fair claim, only it was cut up by the river, so part of it was on the other side of the stream.

Q. Was it covered with timber?

A. Well, it was scattering timber; the timber wasn't very valuable on it; there was spruce and birch.

Q. You thought it was a good claim when you took it, didn't you?

A. Well, part of it was very nice smooth land.

Q. You thought it was a good claim when you selected it?

A. Yes, sir; I thought it would make a nice farm; the bigger part of it was tillable land.

Q. And plenty of opportunities to work in Superior, right near there?

A. Yes; there was at the time.

Q. When you went up there what you were seeking for was a claim where you would have plenty of chances to work?

A. Yes.

Q. You got what you went after?

A. Yes, sir.

Q. And then came down and sold it to Mr. Stinson without consideration, except for two or three hours, for less than $300, only about $100 more than you had paid for it?

A. Yes, sir.

Q. How much later was it that you received a patent for the land—did a patent come to you from Washington?

A. I don't recollect whether it came to me or not; at any rate I never called for it at the land office. After I disposed of the land it came and I never made any inquiries about it.

Q. Did you afterwards make a second deed to Mr. Stinson?

A. It appears to me that I did.

Q. Do you remember when that was made—was it June 20, 1856?

A. I should think it was later than that.

Mr. SPOONER. The date of the patent is May 1, 1856, and of the second deed June 20, 1856.

Q. How came you to make this second deed to Mr. Stinson?

260 A. I don't recollect the occurrence; I don't think Mr. Stinson called for it.

Q. How did you come to make it?

A. The person that represented Mr. Stinson came and stated that the deed—I think it was some attorney from Taylor's Falls—and he said that Mr. Stinson had requested him to get the second deed to complete the title; that the title was not perfect. I don't know; there was something about it that he asked for the deed, and I signed that.

Q. Did you know this person that came to see you—had you ever seen him before?

A. Yes, sir; I had seen him before, but I can't recollect who he was.

Q. Was anything paid to you for that second deed?

A. No, sir.

Q. You went back home, did after you got through these transactions?

A. Went up to Chisago Lake.

Mr. SPOONER. Got pretty rich, didn't you?

A. Yes; I fared pretty well—got pretty well to do.

Q. What did you go at when you got home?
A. I think we stayed there some time assisting that we were living with—clearing.
Q. Now, in locating upon these lands you had nothing to guide you except what knowledge you had as woodsman and what facts you got from passing through the country—is that so?
A. That was all, only when we went up we saw some claim shanties on the trail when we got pretty well up towards the lands, and we went in there to look at the shanties, and then we found that they were taken up; we found a line and we looked when we came to the section corner to see what section we were in, and compared that with the map, and then we knew just where we were, and then we commenced tracing lines around to look at the lands and locate them.
Q. You don't know how Mr. Stinson came to be at Hudson?
A. I do not.
Q. You didn't know that he was going to be there?
A. Not at all; no, sir.
Q. None of the men sent him any word as far as you know?
A. So far as I know; no, sir.
Q. You would have known it if they had, wouldn't you?
A. I should, probably; I did not.
Q. Did Stinson pay you in cash?
A. Yes; he paid it in cash—paid it in gold.
Q. Did your brother Andrew have money of his own with which to pay his money to the officers at the land office?
A. Yes.
Q. You are sure of that?
A. He had as much money as I had, perhaps more.
261 Q. You are sure of that?
A. Yes, sir; I am sure of that.
Q. As you came down you must have talked over how much money you had; did each of the other parties have enough money to pay what the law required to the land officers, as far as you recollect?
A. I didn't hear any of them say anything to the contrary.
Q. Wouldn't have been much use in their going down there unless they were prepared to pay up, would there?
A. No, sir; I presume if there was any of them didn't have enough they probably borrowed; Gustav Johnson was along at the time, and he had quite a little money along with him; he was a young man from Sweden.
Q. Well, that is just a probability?
A. Yes, sir; that is just a probability.
Q. Unless I ask you for your recollection, don't state probabilities. Did Mr. Olive call upon you this spring at your home?
A. Yes.
Q. Inspector of the General Land Office?
A. I think he said that that was his position; I don't know whether he was inspector of General Land Office; I don't recollect that.
Q. Well, you knew that he was an agent of the Government?
A. Yes, sir; that is, he represented himself to be.

Q. You refused to give him any statement of what you knew about the case?

A. He didn't ask me much about it; he only asked a few questions.

Q. Didn't you decline to make any statement?

A. No, sir.

Q. You swear to that?

A. Yes, sir; he didn't ask for any affidavit or sworn statement. I answered the questions he asked me; he stayed just a few minutes and left.

Redirect examination by Mr. SPOONER:

Q. You had had a man representing himself to be a Government agent to see you before?

A. Yes, sir; that was last year.

Q. Who was it?

A. Well, that is my failure; I don't recall the name.

Q. Streator, was that the name?

(Objected to as leading.)

A. Streator, that was the name.

Q. That was prior to this?

A. Oh, yes; that was last year; I don't know but it was two years ago, perhaps.

Q. What department of the Government did he claim to represent?

A. He claimed to be sent there by the United States district attorney; he was acting in behalf of him.

Q. Did he call upon you for a statement?

A. Yes, sir.

Q. Well, what was there to it?

(Objection made as to any conversation with Streator.)

262 A. Well, he had a written statement covering about one page of legal cap or more—yes, on the other side, too—and he asked me if I would sign it; it is merely a statement he said. I took it and looked it over, and said No, I would not answer to that because it is not the facts, it is untruth, and I would not sign any paper of that kind at all.

(Motion made to strike out answer as irrelevant.)

Q. You stated to me, didn't you, that you remembered doing some other work?

(Objected to as leading.)

Q. Do you remember any other work you did, aside from that that you have already stated?

A. Yes, sir; when we came back to St. Paul from the harvest—the attorney put that question to me, what we were doing during the summer of '54, and I answered that we went out *out* on the harvest field out in western Minnesota during haying and harvesting, and we stayed there and worked until in September, early in September; then we came back to St. Paul and we were employed by a surveyor around the city then and worked as chainmen, I and my brother, until some time in November, about the middle of November; so we earned quite a snug sum of money there.

Q. Now, do you remember what wages you got of the surveyor?

A. We got two dollars a day as chainmen.

Recross examined by Mr. BRIGGS:

Q. Well, with wages at $2.00 a day, $100 wasn't such an enormous sum of money, was it?

A. Well, we had to pay our board out of that in the city, and board was pretty high at that time; we had to pay $4.50 a week for board in St Paul.

Q. Right along?

A. In the city of St. Paul; that is the only time we stayed to pay any board during the time we were working for the surveyor.

Q. You got $2.00 a day when you worked in the harvest field?

A. Yes.

Q. You could earn $100 in two months?

A. No; we couldn't do that; there was a good many days docked for rainy days when we were lying still; I think we earned $75 or $80 a piece.

Q. In two months?

A. Well, it wasn't perhaps quite two months.

Q. And here you had walked clear up to Superior from Taylor's Falls, stayed out on your claim and slept in a miserable hovel a couple of weeks, and walked back to Chisago County again and gone from there to Hudson and proved up, and all you got for your claim was $100?

A. We didn't walk all the way down; we built a raft on the
263 upper St. Croix and put our blankets and stuff on and floated it down, so we had quite an easy trip down comparatively.

Q. But not a very easy trip up?

A. No.

Q. And all you got for what you had done up there was $100?

A. Yes, sir; and that was a good deal.

Q. Well, that was all, wasn't it?

A. That was all.

Redirect examination by Mr. SPOONER:

Q. Where were these other claim shanties with reference to the tracts of land that were entered by you and your associates?

A. Well, there was one of them was on the quarter section adjoining the claim that I took, and the others were further west and southwest.

Q. Who was this man you said had considerable money?

A. Gustav Johnson.

Q. You say he had considerable money?

A. Oh, yes; Mr. Johnson he had considerable money; he was a wealthy farmer's son in Sweden and he had quite a little sum of money.

Q. How much money did he have, do you know?

A. I couldn't say how much he had; I understood he had quite a good sum of money.

Q. Did any of the rest of the men have money?

A. Well, I don't know how much they had.

Q. Did Sven Magnussen have any?

A. Oh, yes; Sven Magnussen had money.

Q. Do you know anything about how much he had?

A. Well, Sven Magnussen had—I don't know exactly as to the amount he had, but he had a little piece of property that he sold to a newcomer

and got $300 for, and he had at least $200 before; I know he mentioned that; we lived together, so I know about that; he must have had four or five hundred dollars.

Q. You said you had sufficient money of your own when you went there to enter the land and pay the fees?

A. Yes, sir.

Q. Do you know whether Mr. Stinson paid the same price to others that he paid to you or whether he made a bargain with each man, different prices?

A. I don't know what he paid the others; I suppose probably he told me, but I don't know whether he told me now; I don't know whether he paid them the same or more or less.

Mr. BRIGGS. You have no recollection of asking the others what they got?

A. I have no recollection of asking them that.

Q. You think you probably did at the time?

Mr. BRIGGS. Well, that is an assumption.

Mr. SPOONER. Well, he undoubtedly did.

Q. Well, who of these men are dead?

A. Sven Magnussen is dead; the rest are alive as far as I know.

OTTO WALLMARK.

264 *Certificate of commissioner.*

United States of America, circuit court of the United States for the western district of Wisconsin.

WESTERN DISTRICT OF WISCONSIN, *ss:*

I, Frank M. Stewart, a U. S. commissioner in and for said district, do hereby certify that in pursuance of the notice hereto attached, signed by the attorneys for the respective parties and in pursuance of the stipulation contained in the caption to the deposition hereto attached and herewith returned, made by all the attorneys for the parties, I took the deposition of Otto Wallmark at my office in the Federal building in the city of Madison, county of Dane and State of Wisconsin, on the 30th day of April, A. D. 1895, beginning at nine o'clock in the forenoon and ending at 3.15 o'clock in the afternoon on the 30th day of April, A. D. 1895; that such testimony was taken in the suit of United States of America, complainant, against James Stinson and Henry J. Stinson, defendants, pending in the circuit court of the United States for the western district of Wisconsin, and that Harry E. Briggs, dist. atty., & E. P. Vilas, esq., for the complainant, and Spooner, Sanborn & Kerr and R. M. Bashford, esq., for the defendants in said suit, appeared before me at the taking of said deposition.

I further certify that the reason for taking said deposition was that the said witness lives at a greater distance than one hundred miles from the place of trial of said suit and is about to go out of the country. That I am not now and never have been of counsel or attorney to either of the parties to the said suit, nor interested in the event of the cause; that said witness was, before giving any testimony, by me duly and publicly cautioned and sworn to testify the truth, the whole truth, and nothing but

the truth relative to said cause, and was by me carefully examined; that the said testimony was taken down in shorthand by Thomas A. Polleys, a disinterested person, in my presence, pursuant to the stipulation of the parties appearing in the caption to said deposition, and that by the said stipulation the reading over of said testimony to the witness was waived; that I have sealed up the said deposition and directed the same to said circuit court of the United States for the western district of Wisconsin, at the city of Madison in said district.

In testimony whereof I have hereunto set my hand and affixed my official seal this 30th day of April, A. D. 1895.

F. M. STEWART, *U. S. Commr.*

265 (Endorsed:) Circuit court of the United States for the western district of Wisconsin. United States of America vs. James Stinson et al. Deposition of Otto Wallmark. Filed May 7, 1895. F. M. Stewart, clk.

Deposition of George N. Hillman.

Afterwards, to wit, June 16, 1899, filed depositions of George N. Hillman and Peter Norell, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
against
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The deposition of George N. Hillman, taken on the part of the defendants, June 12th, 1899.

The said George N. Hillman, being duly sworn, testified as follows:

Examined by Mr. SANBORN:

Q. State your name, age, and residence.

A. My name is George N. Hillman; I am 46 years of age past, and I reside in St. Paul, Minnesota.

Q. What is your business?

A. I am court reporter for the district court of Ramsey County, Minnesota.

Q. How long have you been in that business?

A. I have been in the business of court reporting in the neighborhood of twenty-five years; in St. Paul, the official reporter of the district court for a little over twenty-four years.

Q. Do you have charge of doing all the reporting work in the district court of Ramsey County?

A. I have.

Q. Have you also been a notary public?

A. Yes, sir.

Q. For how long?

A. For at least fifteen years, I think.

Q. Did you in 1893 take certain testimony in a case pending in the United States circuit court for the western district of Wisconsin, in which

J. E. Gagnelius and John Ogren were complainants, and James Stinson was defendant?

A. I did.

266 Q. When was it taken?

A. In the month of July, 1893.

Q. Where was it taken?

A. At Chisago City, Chisago County, Minnesota.

Q. In what capacity did you act in taking that testimony?

A. I acted as a notary; notary public.

Q. Did you yourself reduce the testimony to writing?

A. I did.

Q. And how did you do it?

A. I took the testimony upon the typewriter.

Q. You carried your typewriter out there, your machine out there?

A. I did.

Q. Among the witnesses there examined before you, was there a witness by the name of Lorens Johnson?

A. Lorentz.

Q. That is what it is here, yes.

A. Yes, sir.

267 Q. Was he sworn?

A. He was.

Q. Was he examined by an interpreter?

A. Through an interpreter—yes, sir.

Q. Who was the interpreter?

A. The interpreter was Otto Wallmark.

Q. Was he examined on the part of the plaintiff in that case, and cross-examined on the part of the defendant?

A. He was examined by Mr. Bashford on the part of the complainants and by Mr. Sanborn on the part of the defendant.

Q. Will you state whether Mr. Lorens Johnson on that examination testified that at the time he went to Superior and took up land and built a shanty on it he and other men with him worked together and slept in each other's shanties? State what he testified in that respect.

A. The witness on his cross-examination testified in respect to that point as follows: "I can name some of the men that went up to Superior with me. One was John Johnson, another Andreas Swenson, Peter Norell, John Lonquist—but at that time he went by the name of John Johnson second—Johannes Helin, Peter Nelson, Matthias Larson and Sven Larson, Sven Magnusson, a man by the name of Ahlstrom, Nils Berg; I can not recollect any more. Peter Nelson is dead; John Johnson is dead also. Johannes Helin is dead also; Matthias and Sven Larson are both dead; Ahlstrom is also dead. I know that some of these men whom I have mentioned took up land and built a shanty the same as Swenson.

"Q. Did you go on some land to enter or preempt it?

"A. Yes. I took up land and built a shanty on it. I can recollect that we changed work and slept in each other's shanties; can recollect that I slept in my shanty one night anyway, but can't recollect particularly. It is over forty years ago. I can recollect that I cleared a piece of land about the shanty."

Q. Did he in that examination also testify that "there was an opening for a door" in his shanty, but that he could not recollect whether it was made to be locked or unlocked?

A. He testified: "The roof of the shanty was covered with some brush and poles; there was an opening for a door, but can't recollect whether it was made to be locked and unlocked."

Q. Did he in that examination testify that if it was contained in the papers (meaning the entry papers relating to this entry) that he did not enter the land to sell it on speculation, but to devote it to his own use, that such statement was true?

268 A. He testified: "If it was contained in the paper that I did not enter upon the land to sell it on speculation, but to devote it to my own use, it was true. I did not enter it to sell on speculation, but to devote it to my own use."

Q. That is what he testified to?

A. That is what he testified to.

Q. Did he in that examination testify that if the paper (meaning the entry papers in relation to his entry) stated that he had not prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself, that such statement by him so made was true?

A. He did so testify.

Q. Just state what he testified in that respect.

A. He testified as follows: "If the paper stated that I had not, prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I might acquire from the Government of the United States should inure in whole or in part for the benefit of any person except myself, it was true."

Q. Did he testify in that examination whether or not he had made any contract or bargain to sell to any person or for any person the said land or any part of it?

A. In reply to that, I will say the witness testified in respect to that point as follows: "I had made no contract or bargain to sell to any person or for any person the said land or any part of it."

Q. Did he in that examination testify that he could not recollect whether he paid any money for the entry or for the land?

A. He testified: "I can not recollect whether I paid any money for the entry or for the land."

Q. Did the witness on that examination make any statement in regard to any agreement he had with James Stinson in regard to this land? If so, what was it?

A. The witness testified as follows in regard to that matter: "I had not at any time made, and did not make any agreement or understanding with James Stinson or any other person that the entry and the improvement upon said land was for the benefit of said Stinson or any other person except myself."

Q. At the same time that this testimony was taken, the depositions of other men who testified to something of the same state of facts appeared before you?

A. I remember there were other witnesses examined at this same occasion who testified concerning the same or similar transactions—land matter.

269 Q. Was this testimony through the interpreter read over to Mr. Lorens Johnson?

A. It was.

Q. Was the testimony taken deliberately and clearly?

A. The testimony was taken deliberately, clearly, and carefully.

Q. I will ask you whether in taking the testimony you took down some of it in shorthand in order to get a better statement of the question and answer combined?

A. I think I have a recollection that a portion of the testimony was taken in shorthand in order to secure absolute accuracy as near as possible, and afterwards immediately transcribed upon the machine.

Q. Can you recollect whether that was true of Mr. Johnson's testimony?

A. I can't recall as to whether that remark would apply to this particular witness or not.

Q. Was the testimony read over to the witness immediately after he gave his testimony—immediately after the testimony had been completed?

A. That is my recollection, although I wouldn't want to be absolutely positive.

Q. Do you recollect whether we went there in the morning, completed the testimony of Mr. Johnson and other witnesses, had the same signed and read over, and returned to St. Paul the same evening?

A. Yes, sir; I recall that fact.

Q. And the testimony was complete when you returned to St. Paul that day?

A. It was.

Q. Was the testimony then returned by you to any officer; and if so, when and to whom?

A. The testimony referred to was placed in a sealed envelope, addressed by me to the Clerk of the United States Circuit Court for the Western District of Wisconsin, Madison, Wis., and deposited in the post-office at St. Paul, Minnesota, on July 22, 1893.

Q. Was the fact of taking the depositions duly certified to by you; and if so, when?

A. The taking of the depositions referred to was certified to by me on the 19th of July, 1893.

Q. Was the deposition of Mr. Lorenz Johnson which you have mentioned signed and sworn to by Mr. Johnson in your presence on that day?

A. It was.

Q. Was the fact of taking the depositions duly certified to by you; and if so, when?

A. The taking of the depositions referred to was certified to by me on the 19th of July, 1893.

Q. Was the deposition of Mr. Lorens Johnson which you have mentioned signed and sworn to by Mr. Johnson in your presence on that day?

A. It was.

GEO. N. HILLMAN.

270 On the 13th day of June, 1899, the witness George N. Hillman was recalled, and cross-examined by Mr. Simmons, as follows:

It is stipulated that solicitor for complainants may make any and all objections at the hearing which might have been made at the taking of the testimony had the solicitor for the complainants been present, except objections to the form or order of the questions. This stipulation is to apply to the depositions of both witnesses, Norell and Hillman.

Q. Mr. Hillman, I want to ask you if you remember the nature of this action between Gagnelius and Ogreen, complainants, and Stinson, defendant, in which you took the testimony of the witness Lorens Johnson?

A. The nature of the action?

Q. Yes.

A. I don't know the nature of the action.

Q. What was the controversy over?

A. I am ignorant of that also. I know nothing whatever about the merits of the case; did not at that time, and never have since.

Q. You are unable to state, then, how the question of the preemption of this land at Superior was material or relevant to the issues in that case?

A. I know nothing about it that I recall. It may have been explained at the time by one of the counsel, but if so, I have no recollection of it.

Q. Was the title to the land said to have been entered or preempted by this Lorens Johnson involved in the action in any way?

A. I don't remember.

Q. I suppose you do not talk or understand Swedish yourself?

A. I don't speak the Swedish language. I have heard quite a good deal of Swedish spoken, in the course of my reportorial experience in court, and heard it rendered from the Swedish to the English through the medium of an interpreter a great many times, and in that way have acquired some knowledge of the colloquial language, conversational phraseology of that language.

Q. Well, do you claim to be able to understand testimony that is given in Swedish without the aid of an interpreter?

A. Only certain portions.

Q. In taking down the testimony of this witness, Lorens Johnson, I suppose you relied upon the interpretation or rendition of it into English by the interpreter, Otto Wallmark?

A. I certainly did, to a large extent.

271 Q. The witness spoke in Swedish?

A. I have no doubt he did; at least, for the most part. He may occasionally have used broken English.

Q. He claimed at the time to be unable to understand or speak English, did he?

A. I presume he did, from the fact that an interpreter was employed.

Q. I think you stated that Otto Wallmark was the interpreter who acted in that case?

A. I did.

Q. Do you know where he resided?

A. My recollection is that he was a resident of that place.

Q. That is, Center City?

A. I think it was Chisago City. I think—it seems to me he was justice of the peace, although I am not sure now; it is six years ago.

Q. Do you recall the fact that he was one of the men who was alleged to have entered land for the defendant, James Stinson, in the vicinity of Superior?

A. Whom do you mean by he?

Q. Otto Wallmark.

A. I wouldn't be at all positive in my recollection on that point. I have a sort of a vague impression that he was one of the men, but I couldn't be positive enough to say that it was the fact.

Q. Do you know whether or not he is the same Otto Wallmark whose deposition has been taken on behalf of the defendant in this case?

A. I believe so.

Mr. SIMMONS. I suppose perhaps defendant's counsel will admit that fact.

Mr. SANBORN. Oh, yes; he is the same one.

Q. You stated in your direct examination, Mr. Hillman, that after the testimony was taken by you it was read over to the witness—that is, to Lorens Johnson. Who read it over?

A. I can't remember now distinctly who read it over; I can only judge from my usual practice and from what would naturally take place under those circumstances.

Q. I think you did state you had no independent recollection about it.

A. I believe I read the testimony to the witness.

Mr. SANBORN. Or to the interpreter.

WITNESS. To the interpreter.

Q. You read it, of course, in English?

A. Undoubtedly.

Q. That is, if it was read at all?

A. There is no question in my mind but that it was read.

Q. You stated, I see, on your direct examination, "That is my recollection, although I wouldn't want to be absolutely positive."

A. Just read the question and answer there, please.

272 Q. (Reading.) "Was the testimony read over to the witness immediately after he gave his testimony—immediately after the testimony had been completed. A. That is my recollection, although I wouldn't want to be absolutely positive."

A. I wish to make that answer a little more definite. That answer refers to the word "immediately," not to the fact that it was read. I am positive that the testimony was read to the witness.

Q. As you just stated, it was read by you in English, undoubtedly?

A. Yes.

Q. As to the interpretation by Mr. Wallmark you are unable to testify, are you not?

A. I am, at this distance of time.

GEO. N. HILLMAN.

Subscribed and sworn to before me this 15th day of June, 1899.

[L. S.] FRED W. GOSEWISCH,
Notary Public, Ramsey County, Minnesota.

Deposition of Peter Norell.

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
against
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The deposition of Peter Norell, taken on the part of the defendants, June 12th, 1899.

PETER NORELL, sworn as a witness on behalf of the defendant, testified as follows:

Examined by Mr. SANBORN:

Q. What is your name?
A. Peter Norell.
Q. Where were you born?
A. In Sweden.
Q. And how old are you?
A. Seventy-four next Friday.
Q. Do you remember when you came over to the United States from Sweden?
A. It was in 1853; in October some time.
Q. October, 1853?
A. Yes.
Q. Where did you go first when you came here to this country?
A. I stopped in Illinois, in Moline, the first winter.
Q. What did you do there?
A. I worked some part in a paper mill there, and part chopping cord wood there.
Q. And how long did you stay there?
273 A. Until the next spring. I came there late in the fall and stayed until the Mississippi was open, so I could go up to Minnesota.
Q. You went from there, then, to Minnesota, up the river?
A. Yes.
Q. And where did you go when you came to Minnesota?
A. I went to Chisago County.
Q. Who was with you? Were any Swedes with you?
A. Yes; there was lots of them went with me that was in the same place from Sweden, all of them went up there. There was about ten or twenty of them.
Q. And did they go with you up to Chisago County, up the river and up to Chisago County?
A. Yes.
Q. You got up to Chisago County in the spring of 1854, did you?
A. Yes.
Q. What did you do then?
A. I helped my brother build a house there.
Q. In Chisago County?
A. Yes.
Q. And did you stay there during the summer?

A. Yes; I stayed there in the summer till about the middle of August and then I went up to Superior.
Q. That is, you went up to Superior about the middle of August?
A. I think it was.
Q. How long did you stay up there?
A. A little over two months.
Q. How did you go?
A. Footing.
Q. Went afoot?
A. Yes, sir.
Q. Some Swedes go with you?
A. Yes.
Q. Do you remember who?
A. Well, I don't recollect all of them. Some of them I recollect.
Q. Just give the names of some of them.
A. There was Mr. Lorens Johnson and Andrew Svenson, or Ogreen.
Q. Well, his name was Svenson?
A. Yes.
Q. The same man?
A. Yes; the same man; yes, sir.
Q. Anybody else you remember?
A. Nils Berg.
Q. Anybody else that you remember?
A. And Gus Vieberg.
Q. Sven Larson?
A. No—oh, yes, yes; he was with me; yes, sir.
Q. John Johnson?
A. Well, I can't recollect all of them. And Peter Nelson, I recollect him.
Q. You don't remember John Johnson?
A. I don't remember Vieberg—I mean John Johnson.
274 Q. You don't remember him?
A. No; I guess not; I don't remember.
Q. Well, what did you do when you went up to Superior?
A. Cutting cord wood in the main street there, the first street in the old Superior there, a part of it.
Q. Cutting down timber?
A. Yes; cutting down timber and cutting down cord wood in the middle of the street.
Q. Working on the street?
A. Yes; working on the street; yes. And then I went out on the steamboat bridge going down to the bay.
Q. Worked also on the steamboat bridge going to the bay?
A. Yes; going into the bay. This is the two that I worked, on the street and on the bridge there.
Q. Did you take up any land up there?
A. Yes.
Q. Now, what did you do? Did you go on the land?
A. Well, I went on the land there.
Q. What did you do on the land?
A. I built me a shanty there, and cut some brush around there, building a little kind of a fence.

Q. Did you plant anything?
A. Yes; I guess I planted a few beans there.
Q. How long did you stay there on the land?
A. Well, I can't tell that; it is too long ago; I forget. I know that I have been sleeping in the shanty, had a door and had a smoke hole, and I had a witness there, too.
Q. You had a door to the shanty?
A. Yes, sir.
Q. And a smoke hole or chimney hole?
A. Yes, sir.
Q. And then you had one of the Swedes with you for a witness?
A. Yes; and cooked and eat in there.
Q. And you cooked and ate in the shanty?
A. Yes, sir; I cooked and ate in the shanty.
Q. And slept there?
A. And slept there, too; yes, sir.
Q. Can you remember who the witness was?
A. No; I can't do it.
Q. Can you remember whether he had also a claim himself, this witness?
A. Yes; my witness?
Q. Yes.
A. Yes, sir; close to there. And so I went over to him and slept with him, too.
Q. Can you remember which way it was from your claim to his—what direction?
A. Well, I don't know; I forgot that. It was this way—well, it was either northwest or southwest.
Q. Either northwest or southwest from yours?
A. Yes; from mine. Which, I can't say.
275 Q. You can't remember just how long you stayed there?
A. No; it is too long ago; I forget everything about that.
Q. Can you remember when you went back to Chisago County?
A. Well, it probably was some time in the first part of October or the middle of October, I am not sure; I can't say.
Q. How did you get there? How did you go—did you walk?
A. Walked; yes, walked up and walked down.
Q. Where did you start from when you went to Superior?
A. I start from my claim.
Q. Well, where in August, when you went up to Superior, did you start, from St. Paul or Chisago County, or Taylor's Falls?
A. Taylor's Falls.
Q. Do you know how long it took you to go?
A. Six days.
Q. And when you went back where did you go to?
A. Well, we came the same way back.
Q. To Taylor's Falls?
A. Yes, sir.
Q. Do you know how long it took you?
A. Well, I don't know. We building a little raft, and we went on the St. Croix River coming down.

Q. You went part of the way on foot and part of the way by the river coming back?

A. Yes. And we went on the raft to Sunrise, and then we landed there, and from Sunrise went to Taylor's Falls.

Q. Who was with you coming back?

A. Oh, most all of them.

Q. The same ones that went up with you?

A. The same fellows that went up with me.

Q. Anybody else with you?

A. Yes; Stinson was.

Q. He was with you coming back?

A. Yes; coming back.

Q. But not going up?

A. No, sir.

Q. That is, James Stinson?

A. Oh, I don't know the name—just Stinson, that is all.

Q. A young man, then?

A. No—well, one of them I guess was, and another one was about 30 or 40—between 30 and 40.

Q. Were there two men by the name of Stinson?

A. Two, one besides him; yes.

Q. You don't remember their names?

A. No.

Q. One was older than the other?

A. Yes; a little, not much I don't think.

Q. How far did they go with you?

A. To Taylor's Falls.

Q. Did you stop at Taylor's Falls?

A. We stopped there over one night.

276 Q. Where did you go then?

A. We went home to what they call Chisago Lake.

Q. Where did Stinson go?

A. They took a steamboat there and went on the river; I don't know where they went; I can't tell.

Q. Somewhere on the river?

A. Went on the river on a steamboat, but how far they went I don't know anything about that.

Q. Now, did you afterwards prove up on this claim? "Prove up"—do you know what that means?

A. Yes.

Q. Did you afterwards prove up on this claim, on this land claim that you made at Superior? Did you prove up?

A. Yes.

Q. Where? Where did you go?

A. To Willow River or Hudson, where the land office was.

Q. Now, when you were up at Superior who spoke to you about taking up a claim or preemption?

A. Nils Berg and——

Q. And somebody else?

A. Yes; that tall fellow, I talked with him.

Q. One of the Swedes, was it?

A. Yes.
Q. Nils Berg and one other Swede you mentioned?
A. Yes; he was a Swede, too, and his first name was John.
Q. Was it Johnson?
A. Well, I forget the back name of it.
Q. But you remember that Nils Berg told you about taking up a claim?
A. Yes, sir.
Q. What did he tell you?
A. He come to me and asked me if I would go to take a claim up. I told him, "No, it is no use; it is too far." He says, "We have taken some claims, and it don't make any difference, you can take one, too." Well, I didn't know whether I would do it or not. Well, they say if I want to take one claim they was going to show me, and then I took it.
Q. You went out in the woods?
A. Yes.
Q. And settled on a claim?
A. Yes, sir.
Q. Now, when did you first see Mr. Stinson, during this summer or fall; what was the first time you saw Mr. Stinson up at Superior? Was it before or after you went out in the woods and took up this claim?
A. It was—we had been there pretty near, I think, two months before I see him.
Q. Had you been on your claim and built your shanty before you saw Stinson?
A. No.
Q. Had you taken up your claim before you saw Stinson?
A. Yes. This Berg, he showed me, and I don't know if I see him before or afterwards; I can't recollect.
Q. You can't recollect whether you saw Stinson before or after Berg showed you the claim?
277 A. No; I can't recollect that; it was just the last part of the time I was there I see him there; I never see him before.
Q. How long before you went down to Taylor's Falls was it that you saw Stinson; you say you went there in August and came back in October?
A. Yes.
Q. That would be a little over two months?
A. Yes; a little over.
Q. You say you saw Stinson about two months after you went there?
A. Yes; that was the first time. At Superior I see him.
Q. Now, how long before you went down to Taylor's Falls with the party, with you and Mr. Stinson, was it that you saw Stinson at Superior?
A. Well, I don't know; that is hard to remember that part of it. That is too far.
Q. Had you been on your claim and made your shanty before you saw Stinson?
A. Yes, sir; I had.
Q. You are sure about that?
A. Yes, sir; I am sure of that.
Q. You didn't see Stinson until you had been out in the woods and made your shanty on the claim?
A. No; not before. He came among us and went down with us.

Q. Down to Taylor's Falls?
A. Yes, sir.
Q. Now, you remember about going over to Willow River to prove up?
A. Yes.
Q. Now, what did you do over there at Willow River; where did you go and what did you do?
A. Well, we went into the land office there.
Q. Who was with you?
A. Nils Berg and—oh, there was eight or ten of us.
Q. All of you proving up, were you?
A. Yes, sir.
Q. Now, did you make out a paper there?
A. Yes.
Q. Did you get a certificate or paper?
A. From the land office?
Q. From the land office.
A. Yes.
Q. Did you pay in your money there for your land?
A. I forgot what it was at the time. They told me—them fellows that could talk English—they were going to pay afterwards, they said.
Q. Going to pay afterwards?
A. Yes; but I understood not a bit of English at all. I couldn't tell anything; I couldn't tell "no" or "yes." Just what they done, I just do the same, what they say.
Q. You got your paper there, did you?
A. Yes.
Q. What did you do with the land; did you sell it to anybody?
A. No.
Q. Didn't sell it to anybody?
A. No, sir.
278 Q. Don't remember about selling it to anybody?
A. No, sir.
Q. Now, whom did you take up this land for; yourself?
A. For myself.
Q. Did you take it up for anybody else?
A. No, sir.
Q. Did you have any agreement with anybody before you took it up that you would take it up for them.
A. No, sir; just what I done it for was for my own use.
Q. Did you have any agreement with Stinson or anybody——
A. No, sir.
Q. —that you should take up the land for him or anybody else?
A. No, sir.
Q. At any time?
A. Not any time.
Q. You can't remember you sold the land to anybody and got any money for it?
A. No, sir; I hadn't.
Q. Well, you don't own the land now, do you?
A. Well, it seems to me I just own it now; it was right.
Q. You never have been up there since, have you?

A. No; I have not.
Q. You haven't made any claim to the land since, have you?
A. No, sir.
Q. You have never paid any taxes on it since?
A. No.

PETER NORELL.

On the morning of Tuesday, June 13, 1899, the witness, Peter Norell, was recalled for cross-examination, and was cross-examined as follows:

By Mr. JOHN B. SIMMONS (counsel for the complainants):

Q. Where do you now live, Mr. Norell?
A. In Chisago, Chisago County.
Q. Whereabouts in Chisago County do you live?
A. In the town of Fish Lake. That is the name of the town.
Q. How long have you lived there?
A. Oh, it is a little over twenty years; twenty four or five.
Q. Where did you live prior to that?
A. I lived at Isanti.
Q. Is that in the same county?
A. No; that is in Isanti County.
Q. How long did you live there?
A. About eight or nine years I lived there, and then I moved back into Chisago again.
Q. Did you live at Chisago before going to Isanti?
A. Yes, sir; I did.
279 Q. I see you stated here, in your direct examination, that you came to the United States in 1853.
A. Yes, sir; I did—in the fall.
Q. How old were you at that time?
A. Well, I can't recollect; 27 or 28.
Q. What had been you' occupation in the old country?
A. Eh?
Q. I say, what had you done, what was your business or occupation in the old country?
A. Oh, I was just working, a workingman just; I had no business, only just working for my living.
Q. Did you earn anything more than your living over there?
A. I earned just so much as I could get to come over with.
Q. You had enough to come over with, had you?
A. Yes.
Q. Did you have just enough to bring you to New York?
A. I had enough to bring me down to Chicago.
Q. Then you stopped in Illinois to earn money enough to carry you up to Minnesota, did you?
A. Yes; I did.
Q. Did you have any money left when you got up to Minnesota?
A. Just so much I got a little to begin with.
Q. You arrived in Minnesota in the spring of 1854, I think you testified?
A. In Minnesota?
Q. Yes, sir.

A. Yes; I did.
Q. About what time? In the spring?
A. Well, I don't recollect what time I come into Minnesota. I left Illinois as quick as the Mississippi was open and come up on the steamboat to Stillwater, and I went up to Taylor's Falls and Chisago Lake.
Q. What led you to go up there to Chisago?
A. I got a brother up there
Q. Did you say you had a brother up there?
A. Yes; I had a brother here in this country three years before I came here, and he was working on the government road between Taylor's Falls and Sunrise—the government road that went up to Lake Superior.
Q. Did any of the others who came over with you on the same boat go up there to Chisago?
A. Yes, sir.
Q. Who were they?
A. About fifteen or twenty of them.
Q. Do you remember who they were?
A. Lindstrom and—well, there was lots of them. I forget the names of them all. Lindstrom, I know him. He was with me the whole way from the old country and up here to Chisago Lake.
Q. What was his first name?
A. Daniel.
Q. Was John Johnson one of those who came over with you?
A. No.
Q. You knew John Johnson afterward, didn't you?
A. Yes; I knew him since I come up to Chisago Lake, but he
280 wasn't with me coming from Sweden. He came from another part of Sweden.
Q. Did Andrew Swenson come over with you?
A. Who?
Q. Swenson.
A. No. I know him, and he was the first man I know since I come up to Chisago Lake.
Q. Sven Larson, did he come over with you?
A. No; he come afterwards, in the same spring. I had been there, I guess, about a month when he came up there after me. I was there about a month before, about, when he came up to Chisago Lake.
Q. Lorens Johnson, did he come over with you?
A. No.
Q. You got acquainted with him up here at Chisago, did you?
A. Yes, sir.
Q. Was he there when you arrived there?
A. What?
Q. Was he there when you got there?
A. Oh, he was there ahead of me.
Q. Martin Larson, do you remember him?
A. Yes.
Q. Did he come over with you?
A. No; he came just fourteen days after me.
Q. Was he at Chisago when you got there?
A. I was in Chisago?

Q. Was Larson there when you got there?

A. No; he came after me about fourteen days or three weeks. After me since I came.

Q. Well, how about Otto and Andrew Wallmark, did they come over with you?

A. No. I don't know if they were ahead of me there or they came just after me not very long, about three or four weeks after since I came. I was acquainted with them as quick as they came in. There wasn't only a few settlers in there and we got acquainted.

Q. Gustav and Israel Johnson, did they come over with you?

A. Who?

Q. Gustav Johnson and Israel Johnson.

A. Come over with me?

Q. Yes.

A. Across from Sweden?

Q. Yes.

A. No, sir; they came from the south part of Sweden and I came from the north part of Sweden.

Q. How many of these men that I have named came over from the same part of Sweden that you did?

A. Well, there was Norrison, but he didn't have no business in here with that.

Q. These men that I have mentioned here, John Johnson, Andrew Swenson, or Agreen?

A. Oh, they didn't come over with me.

Q. I ask you if they came from the same part of Sweden.

A. No, no; they came from the south part and I came from the north part.

281 Q. Who are you speaking of now—John Johnson?

A. Oh, John Johnson; he was from the south part of Sweden and I was from the north. There was nobody in there come from the same part what I came from.

Q. None of them?

A. None of them.

Q. Well, you say during the spring and summer of 1854 you helped your brother build a house?

A. Yes, sir; I did. That was the first I done after I came up here.

Q. Did you do any other work in Chisago except that?

A. Oh, I worked a little around there; that is all; and I helped him grub his land. He got land there.

Q. Helped him grub, eh?

A. Yes.

Q. Did you lay up any money during that summer?

A. No; just so much I can make a living to feed my family; that is all.

Q. Then, along the latter part of August, you went up to Superior?

A. Yes; some time in August; it was about the middle of August; somewhere around that way. I can't recollect so far back.

Q. What did you go up there for, Mr. Norell?

A. They hired me to go up there to work for the month; for $30 a month.

Q. Who was it hired you?

A. It was a Swede from Taylor's Falls came up there and hired and hired all around there.

Q. A Swede from Taylor's Falls?

A. Yes, sir. He could talk a little English, and he came up there a hired us to go up and work there.

Q. Let me ask you, Mr. Norell, is Taylor's Falls known by the sa name now? Is it called Taylor's Falls now?

A. Yes; they call it Taylor's Falls now.

Q. And that is in Chisago County, is it?

A. Yes, sir.

Q. Where was it you were living at the time he came there a hired you?

A. I lived up at Chisago Lake there, eight miles west of Taylor's Fall

Q. And were you living with your brother?

A. No—yes. We lived together, my wife and me. He wasn't ma ried, and I was married from the old country.

Q. You were married when you came over here, were you?

A. Yes, sir; I married in 1852, on the 22d of October, in the ol country, and I left the old country in 1853 and come up here.

Q. Did your brother hire out to go to Superior?

A. No, sir; there was another fellow from Taylor's Falls done it.

Q. No. I say did he hire out to go out with you?

A. My brother?

282 Q. Yes.

A. No, no.

Q. He staid behind, did he?

A. He staid to home, over there at Chisago.

Q. Did your wife go with you?

A. No.

Q. What was she doing while you were gone?

A. Well, doing a little cooking for my brother.

Q. She kept house for him, did she, while you were gone?

A. Yes.

Q. She was doing that before you left, was she?

A. Oh, yes; she done that for both of us, and I built a house for my brother.

Q. After the house was built you and your wife moved in there, and she kept the house?

A. Yes; she did.

Q. And you lived with your brother?

A. Yes.

Q. And she continued to keep house for him while you were gone up to Superior?

A. Yes, yes.

Q. Did you hire out for more than one month?

A. No; just I hired out for the month. He didn't say one or two or three or four—that is, nothing said, only just to go up there to work for a month; thirty dollars a month; and how many months he didn't say anything about.

Q. How many months he didn't say?

A. No, sir; he didn't.

Q. Did he tell you when he would commence paying you?
A. Eh?
Q. Did he tell you when your pay would commence?
A. No; he didn't say anything about that. He said to me, "You are sure to get this pay." But when we going to get our pay I didn't know anything about that, and still we was sure we going to get the pay as quick as we have the work done—get through the work there.
Q. What made you sure that you would get your pay, Mr. Norell?
A. That fellow that hired me said I was sure I going to get my pay for it.
Q. Was he hiring you for himself or for somebody else?
A. He don't say anything about that.
Q. Well, didn't he tell you who the man was that was going to pay you?
A. He said there was a man going up there to Superior, going to be in Superior, and going up, and I don't know—"That fellow going to pay," he said.
Q. Did he tell you his name was James Stinson?
A. I don't know if he say it or not; I can't say. That is what I can't recollect. He says, "There is a man going up there in a company." That is what he said.
Q. In a "company?"
A. In a company going up there.
283 Q. Did you understand he was going up with you?
A. Eh?
Q. Did you understand he was going up along with you?
A. That fellow that came up there?
Q. Yes.
A. No; he was a blacksmith, and he couldn't go. He had business enough on the farm.
Q. I don't think you understand me, Mr. Norell. I was asking you about the man that was to pay you. Did you understand he was going up along with the men that were to work for him?
A. Going up with us that went up there?
Q. Yes.
A. No.
Q. You understood you were going to find him up there?
A. Yes; we find the company up there. That is where they were going to pay us—to pay us for our work.
Q. Well, he told you this man was rich, did he, and able to pay you?
A. Oh, he didn't say anything about anything—only he said the company was rich enough; we were sure of our pay. That is what he said, as far as I can recollect.
Q. Well, don't you recollect, Mr. Norell, that the name of James Stinson was mentioned?
A. I heard that name—I came up to Superior—Stinson. And I didn't know him, and I hadn't see him, and I heard talking about Stinson and somebody else was in the same company. That is what they say. There was one fellow was with us who talked a little English, and he said, "There is one of them that is the company going to settle up with."

Q. Well, when you got up there you learned he was one of that company that you had hired out to, did you?

A. Yes; that is what we working for—begun to work for.

Q. Don't you remember that you heard his name mentioned down there at Chisago before you started for Superior?

A. No, sir; no, sir; no, sir. Never heard the name before I come up there to Superior. Just the name I heard was "The Company," that is all.

Q. Who was the Swede that hired you?

A. He was a blacksmith, and I forget the name of him.

Q. Was his name John Johnson?

A. Well, I can't tell. I forget his name. That is all I recollect. I know he was a blacksmith in Taylor's Falls, but his name I have forgotten.

Q. You remember he could talk English, do you?

A. Yes; that is what he said, he talked a little English. He talked Swede to me; he didn't talk English to me. I don't understand a word of English.

Q. Did he have anybody with him?

A. No—yes; one of them was out there—Ogreen.

284 Q. He had a man named Ogreen with him, did he?

A. Yes.

Q. When he came to hire you?

A. Yes; and he wanted me to go, too, and Ogreen went, too.

Q. Was Ogreen the only man that you saw with him?

A. Yes.

Q. Did you talk or understand English at that time?

A. No, sir; not more than that box (meaning the spittoon) down there. What you think? I couldn't learn in one winter, coming from the old country up here; not a word.

Q. No; I didn't think you did?

A. And hardly enough now. Oh, well, I understand just so much I can "No" and "Yes," that is all now, and hard to recollect so far back—about forty years. I can't recollect everything.

Q. How many did you say went up there with you to Superior?

A. There was fourteen or fifteen, I guess. Yes, sir; I think there was fourteen or fifteen of us there.

Q. Were they all hired the same way?

A. All hired for to go up there and work.

Q. At $30 a month?

A. $30 a month; yes. There was a boss hired.

Q. Did you have your provisions in addition to the thirty dollars?

A. Yes; I took my provisions from home.

Q. I say were the people that you hired out to to give you anything besides the thirty dollars?

A. The $30?

Q. Were they to give you your provisions while you were there?

A. Yes; while we were there then they give us. We started from Taylor's Falls, and going up there we furnished all the provisions.

Q. They furnished all the provisions?

A. Yes, sir; ourselves.

Q. Oh, you furnished them yourselves?

A. Yes, sir; ourselves. And then when we came up there we get the provisions from the company.

Q. Oh, yes; after you got there you were to have $30 a month and your provisions?

A. Yes.

Q. Who showed you the way up there, Mr. Norell?

A. He was a half-breed. He showed us the way up there, and he lived up in Rush City. He was carrying the mail between Superior and Taylor's Falls at that time. There was just a little trail to walk by.

Q. Did you say Rush City was the place where this half-breed lived?

A. It was three miles west of Rush City now. There was a lake there and a little lumbering shanty, where just they kept a shanty for the lumbermen to go up on the river.

285 Q. You stated in your direct examination here that you didn't remember John Johnson?

A. Oh, there was too many. I can't remember who John Johnson you mean.

Q. There was too many?

A. There was too many—four or five of them, the same name, and then they changed their name, and some kept the old name that they came here the first time; and then afterwards they changed the name of them. Used to be a difference between them you know. So I can not tell the difference of who they was.

Q. Do you remember whether there was one man along by the name of John Johnson?

A. Yes, sir.

Q. Were there two men? Was there one who afterwards was called Vieberg?

A. John Johnson Vieberg.

Mr. SANBORN. Gustav Johnson Vieberg.

WITNESS. Oh, probably there was, but he got that name afterwards. I never heard that name before now.

Q. Well, do you remember there was somebody along by the name of John Johnson?

A. Yes, there was three or four of them.

Q. In the same company?

A. Yes, in the same company.

Q. Are you sure there were more than two?

A. Well, there was three of them.

Q. You think there were three?

A. Yes, sir.

Q. Are there any of them living now?

A. One is dead; been dead for over twenty-four years; and the rest I don't know if they living or dead.

Q. This one that died twenty-four years ago, how did he die?

A. He was drowned.

Q. He was drowned?

A. Yes.

Q. Do you know what became of the other two?

A. No, I don't know anything about it; if they living or if they die, I can't tell.

Q. Did you ever see them after you worked with them up at Superior?
A. Oh, sometimes I see them; but at that time I lived in Chisago.
Q. They came back to Chisago, did they, with you?
A. Yes, sir; all of us.
Q. I think you said there was no road from Taylor's Falls up to Superior?
A. No, sir.
Q. But only a little trail.
A. That is all. The Government road was just up to Sunrise—the Government road was up to Superior.
286 Q. From Sunrise to Superior there was a Government road, was there?
A. No, from Stillwater and up to Sunrise.
Q. But beyond that there was only a trail?
A. Yes, sir.
Q. Do you know how far it is from Taylor's Falls to Superior?
A. Well, no, I never surveyed that road at all; I don't know how far it was. It took us six days to go up, you know.
Q. You remember the time, do you?
A. Yes, you're right. We got lost one day. It took us one day. We go in a big swamp, and we started in the morning and go around, and that night we came back on the same spot we lost our way. Like our fathers in the woods—green fathers!
Q. When you got up there you heard about this man Stinson, did you, Mr. Norell?
A. Oh, I don't know; I didn't hear any other name than company.
Q. Well, you heard Stinson's name after you got up there, didn't you?
A. Oh, probably. I forget all the thing about such a thing; they called them "Company." But there was Nils Berg and Johnson, they were talking about it; they understood a little bit of English; them fellows just told us.
Q. Then do I understand you, Mr. Norell, that you got your orders from this man Johnson after you got up there?
A. Orders?
Q. In regard to your work?
A. Yes, and Nils Berg too.
Q. Johnson and Nils Berg?
A. Yes, sir. Told us that we went on the main street, on the first street in Old Superior, at cutting wood and cord wood and such things, to grade the street off.
Q. Did you see the men from whom they got their orders?
A. You say that——
Q. I ask you if you saw the men from whom Nils Berg and Johnson got their orders?
A. Got their orders?
Q. Got their orders which they gave you in regard to the work?
A. No, no, no. They just come and told us, that is all, what we going to do. And he come to me—come to us there (they had a little shanty in the woods, they living there), "We going to work on the street," he said. And then part I worked on the street and part on the steamboat bridge where it goes into the bay there, a part of the time I was up there.

Q. How long did you work on the street and bridge?

A. I can not tell. That is all what I done there, some work on the street and some work on the steamboat bridge, while I staid there, about half the time—and which part of the time on which work I can't tell; I forget that.

Q. Did you get there in August or in September?

287 A. Oh, we got there in August, the last part of August, you know, and we staid there September and a part of October.

Q. Well, what I want to get at is how long you worked on the street and the bridge. How many months did you work for this company?

A. Well, it was a little over two months, a few days; I don't know, I can't recollect.

Q. And were you paid for two months' work?

A. Two months' work; yes.

Q. Who paid you?

A. Stinson paid us in Taylors Falls; he went down with us.

Q. Stinson paid you?

A. Yes.

Q. When you say Stinson you mean James Stinson, do you?

A. That is all the name I heard; "Stinson," that is all. What the first name was I didn't know.

Q. You say he was the same man that went down with you from Superior to Taylors Falls?

A. Yes.

Q. And he paid you down there at Taylors Falls, did he?

A. Yes.

Q. Did the same company come back that went up with you?

A. Oh, they went down on the boat, took the steamboat and went down the river.

Q. I say, did they all come back, all those that went up with you; did they all come back at the same time that you did?

A. To down home?

Q. Yes.

A. Yes, sir; every one of them.

Q. And Stinson went with them?

A. Yes, sir.

Q. Did he go any farther with you than Taylors Falls?

A. No, sir. I went up to Chisago Lake, in my home there, to my brother's.

Q. Well, you didn't go all the way on the boat to Taylors Falls, did you?

A. We come on the boat?

Q. Yes.

A. From Superior?

Q. Yes. After you took the boat, you didn't go all the way on the boat to Taylors Falls, did you?

A. We went on a little bit of a raft on the St. Croix River.

Q. How far did you go on the raft?

A. Well, I suppose pretty near a hundred miles.

Q. In a raft back to Taylors Falls?

A. No, sir; to Sunrise, then we stopped and went in there at night and got supper and we footed that night over to Taylors Falls, eighteen miles.

Q. You walked over there, did you?

A. Yes; we walked over there.

288 Q. Did Stinson walk over there with you?

A. Yes, sir; he did.

Q. How did you get down from Superior to Sunrise? Did you walk?

A. We walked except that time we had a little bit of a raft and rode on the St. Croix River, and then we went down the St. Croix and down to Sunrise, and walked to Taylors Falls.

Q. And when you walked, Stinson walked with you, did he?

A. Yes, sure; we don't have any other way to come down.

Q. Was there anybody else came along with your party except those who went up there with you and this man Stinson?

A. There was another fellow.

Q. What was his name?

A. Oh, I don't know; I never heard his name. Some of them say he was a brother to Stinson; I can't tell; that is the nearest I know about it.

Q. And that was all, was it?

A. That is all.

Q. Did Stinson pay you for your time until you got back to Taylors Falls?

A. No; he don't pay for the time we are going up, or don't pay for the time to come back; only just for the working for the month.

Q. But you were paid for about two months' time, were you?

A. Well, he pay us for what we had worked for him since we came up there and since we left there we furnished all provisions to go up there, and coming back we came near starving to death before we got down to Sunrise. I had about one biscuit about as big as my fist to live on two days and one night, coming down there. That is pretty good living.

Q. You don't remember the precise amount of money that you got, I suppose, do you, Mr. Norell?

A. Oh, down to the falls?

Q. Yes.

A. No, no; I can't recollect that; I can't remember.

Q. It was sixty dollars or more, was it?

A. Well, I don't know; I can't tell. I know it was over fifty, that is what I know; but how much it was over fifty I can't tell.

Q. Did you see him pay the other men at Taylors Falls, too?

A. Every one of them.

Q. Paid them all in the same way?

A. Yes, yes.

Q. They all got the same amount?

A. Just the same as we hired out; every one of us have thirty dollars a month for to go up there and work; we got just the same wages, every one of us.

Q. Where did you live while you were working on the bridge and the street?

A. There was a little shanty in a spruce swamp or tamarac', some way like that, in the woods there.

Q. All lived together in that, did you?
A. Eh?
Q. You all lived together in that shanty, did you?
A. Yes, sir.
289 Q. Did you live there all the time you were up at Superior?
A. Yes, sir; but then we working there.
Q. Well, let us be clear about that, Mr. Norell. Was it all the time that you were at Superior you lived together in this cabin?
A. Well, so long as we worked on the street there then and some on the railroad bridge there, we boarding there in that same shanty there.
Mr. SANBORN. You mean the steamboat bridge?
The WITNESS. The steamboat bridge. There was a swamp goes from the shore and into the bay there. Then we have to build a bridge for the steamboat in there, right across the swamp there, and to drive the poles.
Q. Well, were you living there during all the time that Stinson paid you for?
A. Living in that shanty?
Q. Yes.
A. Well, we lived in there so long as we working on the street and on the bridge there.
Q. Well, I say were you living there during all of the time that Stinson paid you for?
[The witness stated in Swede that he didn't understand.]
Q. I will try and explain it to you. You say that Stinson paid you for about two months' time?
A. About; I don't know if it was over. Well, he pays for that time we working up there.
Q. Now, for all the time that he paid you for were you living in this cabin together?
A. Yes; yes, sir.
Q. When did you first hear about entering land up at Superior, Mr. Norell?
A. It was just the last few days we was up there.
Q. Didn't you hear something about that before you went up there at all?
A. No, sir; no, sir; not a word of it. It was just all what I heard of it—they hired us to go up there and work for a month.
Q. Did they tell you before you went up there what work you were to do?
A. No, sir; they didn't say a word about it, only to go up there and work.
Q. Was it a week before you left that you first heard about it?
A. Well, it was just the last—whether it was a week, or two days, or three days, or four days, or a week, I can't tell; I can't recollect that at all.
Q. I think you stated in your direct examination here that this man—was it Agreen, or Ogreen, that mentioned it to you?
A. To take a preemption?
Q. Yes.
A. No, sir; it was Nile Berg and John Johnson.

290 Q. Nils Berg and John Johnson?
A. Yes, sir.
Q. Were you all together when they spoke to you about it.
A. No; them two and I was alone. I was working on the street that time; they came up to me and want me—ask me if I want to take a claim, and I tell them, "No; I don't know if I want to do such a thing; there was no place to live up there." And they say they going to take a claim. "Well," they say, "you can take a claim and some time, probably, it will be worth something sometime." That is what they told me. I say, "If you fellows take a claim I can take one." I told them that way.
Q. This was said to you while you were working on the street?
A. Yes, sir; they came there and told me that. And I asked them there——
Q. Well, never mind. You told them that you would go and take a claim, did you?
A. Well, they told me them fellows was going to take a claim.
Q. I say then you told them you would go and take a claim, did you?
A. Well, "If you take a claim there, probably I can take one;" that is the way I answered them.
Q. Well, you did go out onto a piece of land, did you, to make a claim?
A. Yes; I went up there.
Q. How soon after they spoke to you about it?
A. How soon?
Q. Yes.
A. Oh, I don't know.
Q. Was it the same day?
A. No.
Q. The next day?
A. Oh, something like that.
Q. Something like that?
A. I can't tell you if it was the first day or second day; it was just a little after that.
Q. Did the rest of those that went up there with you go out at the same time?
A. Eh?
Q. Did the rest of them go out there too?
A. To go down with me?
Q. To make claims.
A. Oh, yes. Well, they went all over; I don't know anything what they done at all; just Nils Berg and John Johnson; they told me, and showed me the piece of land that I going to.
Q. Who did? Who showed it to you?
A. Nils Berg and John Johnson. And he say I can make a little shanty here now, and grub, and "Make a little fence, and you can make a claim just the same as we have done." And so I did.
Q. Well, didn't you know that the rest of them did the same thing?
A. Some of them, three or four of them; I know that; but about the rest of them, they was on the west side there, southwest in the woods there somewhere; so I don't know; couldn't see.

291 Q. It was heavily wooded, was it, at that time?
A. How?
Q. It was heavily wooded at that time; the land was all covered with wood—with timber?
A. Oh, spruce and tamarack and cedar, and everything—popple and everything.
Q. You don't know the description of the land that you located on, do you?
A. I know, only I forgot; I got a map of it at home.
(It is stipulated that the witness settled on the southwest quarter of section 35, township 49, range 14 west, Douglas County, Wisconsin. This stipulation is made merely for the purpose of identifying the land.)
Q. Was that on or near the river, Mr. Norell?
A. Oh, well, I don't know; I forget. It went close to the lake and it was somewhere in the wood; I can't tell.
Q. Do you know which side of the river it was?
A. No; I don't know.
Q. What kind of a shanty did you build on that piece of land, Mr. Norell?
A. Ten or twelve, and built out of logs, and had a door there and smoke hole, and I stopped there and slept there and eat there. I don't got no time to wait very long; I want to get home to-day.
Q. Yes; we will get you off all right. The size of it was about 10 by 12, was it?
A. Yes; 10 by 12. Well, probably 10 square, or 10 by 12.
Q. What do you mean by a door? There was simply a hole there, was there?
A. Oh, where a man could get in there.
Q. There was no door to close that hole, was there?
A. I don't—I forgot. No; I had a blanket for it.
Q. Did you have another hole for a window?
A. Yes.
Q. There wasn't any window in there, though, was there?
A. Huh?
Q. There was no window put in there, was there?
A. No.
Q. What kind of a roof did you make?
A. Some birch bark, and something like that; poles with birch bark. Birch—you know what birch is?
Q. Yes. Now, isn't it a fact that you just put some poles across?
A. Put poles across and put the birch on top.
Q. You say you slept there?
A. Yes, sir.
Q. How long did you sleep there?
A. Oh, well, I don't know how many nights I was there, but working a good deal around there and making fence there.
Q. Did you sleep one whole night there?
A. One night?
Q. Yes.
A. Oh, more that that; two, I guess, or three. And I had a witness there. and I forget the name of him.

Q. Well, are you prepared to swear, Mr. Norell, that you slept
292 there more than one night?

A. I swear I slept there one night; how many more I can't sure.

Q. Well, you are not sure that you did sleep there more than one night, are you?

A. Well, I am sure I slept there two.

Mr. SANBORN. Two?

The WITNESS. Two nights. And then we went from my shanty over to the next one; that fellow slept with me.

Q. How long did it take you to build the house?

A. Oh, three or four days, I think.

Q. Anybody help you?

A. No; I done it alone.

Q. How large were the logs?

A. Oh, well, four or five or six inches through; just so much as I could lug myself alone.

Q. How high did you build it up?

A. I built it high enough so I could stand right up in the shanty there.

Q. After the roof was on?

A. Yes, sir.

Q. Who was your witness that slept with you?

A. I can not tell; I forgot his name. I don't know if he is alive or he is dead; I can't tell. They had to be on the certificate who they were, what is his name, and he was a witness in the same company, and he lived in Chisago Lake, too, and I forget all about his name and everything. I never talked of it; I never think of it (that land) till, for the last ten years, now, they begin to talking about them lands.

Q. You said a moment ago you were not sure about sleeping there more than one night. What is it makes you sure now that you slept there two nights?

A. Well, I am sure that I slept one, and I think I slept there two nights, and probably more; I can't tell; I forgot. But one night I am sure of.

Q. Well, you are not real sure about more than one?

A. Oh, hardly; I can swear to it regular that I am sure on that, but I think I slept there more than one night, and still I don't swear to it.

Q. What did you cook in there?

A. What I cook?

Q. Yes.

A. I cook potatoes and beans and fried pork there, and had a piece of bread there.

Q. How did you cook them?

A. What I cooked them with?

Q. Yes.

A. With the fire and water.

Q. Built a fire on the floor?

A. Yes; right in the corner; that is generally what we cook them in.

Q. Left a hole through the poles for the smoke to go up, did you?

A. Yes, sir.

293 Q. Well, after you had slept there with this witness, what did you do then?

A. I went over to his shanty and slept there with him.
Q. How long did you sleep there with him?
A. One night I am sure, and if it was more I can't tell.
Q. Then what did you do?
A. Oh, we went back and stopped to my shanty one day, I guess, and then they came rushing that we had to go down.
Q. Who came rushing up?
A. Nils Berg and John Johnson.
Q. Told you you would have to go down where?
A. Go home; leave the place and go home, to Chisago.
Q. Did he tell you why you would have to go down there?
A. Tell me why?
Q. Yes.
A. To go down?
Q. Did he say why you would have to go home?
A. Oh, well, they say, "The work is done."
Q. Had you been working on the street——
A. Oh, me?
Q. ——or on this bridge while you were down their on your claim?
A. I can not tell. I forgot all about it. I hardly think we went back and work.
Q. I mean after you went down there on your claim, during the few days that you remained up there at Superior did you work on the streets?
A. After, since I——
Q. When you went out onto your land, did you continue working on the streets?
A. After, since that?
Q. Yes.
A. No, hardly. We started right for home from the claims, and went home. I don't think we went back any more to work on the street, and I can't tell, it is too far.
Q. I don't think you quite understand me, Mr. Norell. During the few days that you were fixing up your claim and this cabin and so on did you work on the streets at the same time?
Mr. SANBORN. Did you go back into the city?
WITNESS. From the claim?
Q. Yes, from the claim.
A. I guess not. But there is another thing I can't recollect, to be sure; it is so far back I can't recollect everything. If we went back—and I believe we started from the claims and went right off home from our claims and we went back to Superior—I can't tell that, I am not sure of it, and I wouldn't say what I am not sure of.
Q. Perhaps you don't quite understand my question now.
294 You said it was three or four days that you were at work building this shanty; you say you were three or four days doing that?
A. Well, I staid on the claim three or four days.
Q. Well, while you were doing that, were you also working at the same time in the city on the streets?
A. No; I worked on the claim.
Q. And then after you had got your shanty built and slept in it, and slept in this other witness' shanty, Johnson and this other man came out and told you that you would have to go home, that the work was over?

A. Yes; that is what he said.
Q. Were the streets all finished there in Superior then?
A. The streets?
Q. Yes.
A. No, not hardly—yes, the woods was cut out; we cut out the woods out of the street there.
Q. How many streets did you cut out?
A. The main street, we cut it out; cleared the first street close to the bay.
Q. Just one street?
A. Yes; that is what I call it, the main street, the first street.
Mr. SANBORN. The first street from the water?
WITNESS. Yes; the first street from the water.
Q. And this bridge that you speak of, was that built?
A. No; it wasn't hardly done.
Q. It wasn't finished when you came away?
A. No.
Q. Nils Berg and Johnson told you to go home, did they?
A. Yes; they came up there; it was six or seven or eight of them come up to my claim there and said they was ready to start for home.
Q. Did they say anything about going down to Willow River?
A. No; not a bit.
Q. Did they say anything about proving up you claim?
A. No, sir; not a bit, that they say anything about such a thing up to Superior.
Q. You hadn't heard anything about proving up the claim until after you left Superior?
A. No, sir; I ain't heard a word of it.
Q. When did you first hear about proving up the claim?
A. Well, Nils Berg came to me and told me—probably we was home about 14 days or three weeks, I can't tell which—he come in and say, "We are going down to Hudson and prove up," he say, "to prove up." I couldn't understand what he means to prove up, but he explained it to me. I couldn't understand it.
295 Q. Are you sure he didn't speak to you about that on the way down to Taylor's Falls?
A. On the way coming down?
Q. Yes.
A. No, sir; not a word.
Q. Well, you were talking among yourselves coming down there, weren't you?
A. No, sir; no, sir.
Q. Didn't you talk at all?
A. No, sir; not a word about it.
Q. Well, you talked about some things, didn't you?
A. Oh, we talked about some things—that we pretty near have nothing to eat; that is all we talking about, and not enough of that.
Q. Didn't you ask them about this claim that you made up there?
A. I didn't know anything. I couldn't tell you. I didn't ask, I don't understand about the business. I know I didn't hear anybody talking about it.

Q. You said on your direct examination that you made that claim for yourself?

A. Yes; since I came down to Hudson.

Q. You stated here yesterday, when you gave your testimony, when I was not here, that you made this claim for yourself?

A. Yes; that is what I told these fellows yesterday; yes, sir.

Q. You expected you was going to have that land for your own, did you?

A. That is the way we went to Hudson and proved up, I thought it was my own claim.

Q. Did you walk with these friends of yours all the way from Superior to Taylor's Falls and never say anything to them about that claim that you had left up there?

A. I don't think there was nobody understand to talk about it. Some said when we was going home we going to have the land up there, it would be good some time.

Q. Well, now, didn't you talk about that land coming down with your friends from Superior to Taylor's Falls?

A. Talk with them?

Q. Yes.

A. Oh, Nils Berg talking to me, and he say—this is the way he say, "Probably we going to get some money from that place," he say. That is all we talking about. I didn't understand not a bit, and he understood a little of it. He been there two years before me, here in this country, so he learned that.

Q. You didn't ask Nils Berg or Johnson what you had to do to get that land?

A. No; not before when I come home to Chisago.

Q. Well, now it was a good while ago, Mr. Norell; you don't remember very clearly about the circumstances away back there, do you?

A. Huh?

Q. I say it is a long time ago; you don't remember all of these details very accurately, do you?

A. I can't recollect so far back everythings what they talking and what they say.

296 Q. You are not positive, are you, that you didn't talk that over, coming down from Superior to Taylor's Falls?

A. Well, probably they talking over, and I say I forget; that is the way of it.

Q. Then you only mean that you don't now remember talking about it, is that it? When you say you didn't talk about it, you only mean that you don't now remember it?

A. Well, I can not remember everything what we talked coming down.

Q. Then you may have talked about this land and about coming down to Hudson to prove it up, may you not?

A. I never heard talk about Hudson, to go down and prove up before they came to me and we going down to prove up now.

Q. Who came and said, "We will go down now and prove up?"

A. Nils Berg. I never heard talking about that——

Q. What became of Stinson after he paid you off at Taylor's Falls?

A. He went down on the boat and went down the river; I don't know where he went then.

Q. Did he tell you where he was going?

A. No, sir; not a word.

Q. Well, did Nils Berg or Johnson tell you where he was going?

A. They didn't say anything about it, and they start in the morning, as quick as the boat was ready to go down to Stillwater, and how far he went then I don't know, and we went home to Chisago Lake, all of us.

Q. Is Taylor's Falls on the river?

A. Yes, sir.

Q. What river?

A. St. Croix.

Q. So he started down the St. Croix river in the morning after paying you off?

A. Stinson?

Q. Yes.

A. Yes, sir.

Q. How long was it you staid at home after leaving Taylor's Falls?

A. Well, I can't tell sure. It was sure a week, probably 14 days; probably three weeks; I can't tell; it wasn't over three weeks. Whether it was one week or two weeks I can't recollect it.

Q. Well, you are not sure that it was a week, are you?

A. I am sure it was a week.

Q. What makes you so sure about that?

A. Oh, I was working for my brother, you see. I think it was a week.

Q. It might not have been more than a day or two, might it?

A. It was more than that.

Q. Do you know what time it was you went down to Hudson?

A. No.

Q. Do you know what month it was?

A. No; oh, well, it ought to be some time in that month.

Q. In October?

A. Yes; it ought to be that.

297 Q. Your best recollection is it was two or three weeks after you left Stinson before you went down there?

A. Well, from one week to three weeks; between that.

Q. And who was it came to you and said, "We will go down now?"

A. Berg—Nils Berg.

Q. Was he alone?

A. I don't recollect.

Q. Or was Johnson with him?

A. Probably he was; I can't tell.

Q. How many of you went down there together?

A. I can't tell—six, seven, or eight, or nine—how many there was. There was somewhere around there; I can't tell.

Q. As a matter of fact, it was nine, wasn't it?

A. Well, it was six, or seven, or nine; I can't tell; or between there.

Q. Well, you didn't have any money to pay for this land, did you?

A. No; no more than I had that I make up there.

Q. Well, you didn't pay any money for the land yourself, did you?

A. No.

Q. You didn't take any money down there for that purpose, did you?

A. Well, I take money, what I have earned there, if they going to use the money there, and they were not talking about using money I guess.

Mr. SANBORN. They were talking about it?

WITNESS. There was no talking about using the money.

Q. When you got down there, who showed you where to go?

A. Nils Berg and Johnson.

Q. And they took you to the land office, I suppose?

A. That is what they say, and there is what I could see.

Q. Did you see Stinson before you went down to the land office?

A. No.

Q. You found him down there, did you?

A. Well, I don't know; I can't recollect. Probably he was there.

Q. Well, you remember seeing him down there, don't you, after you got there?

A. I cannot remember that at all, if he was there or not. Probably he was there.

Q. Had you learned to understand English at this time?

A. No, sir; no, sir.

Q. Hadn't learned the language then?

A. No, sir; it takes time to change it.

298 Q. Did you sign any papers down there?

A. I don't know; no.

Q. Well, what did you do?

A. I didn't had to sign the certificate.

Q. What did you do after you got to the land office?

A. I told them I had made a preemption up there, and that witness I had in the shanty stood up there and witnessed he had been eating and sleeping in my shanty.

Q. Did he sign his name to any paper?

A. Well, I guess he had to sign. I guess he had to sign his name to the paper to witness, and I signed my name there into his paper with him that I had been a witness for him there.

Q. Well, didn't you sign any paper for your own claim?

A. I don't know. I can't tell; I forgot. I think the witness had to sign.

Q. Wasn't any paper read over for you to sign for your own claim?

A. Whether they read it over, I couldn't understand that—only just what Nils Berg and Johnson told me.

Q. Did they explain the paper?

A. They told me a little—just about a few words—that it was all right.

Q. They said it was all right?

A. Yes; that was all what he told me. They couldn't read English at all—just they talked a little, that is all—and just what the officer in the land office told them they going to tell me.

Q. Well, did they tell you it was all right?

A. Yes; it was "all right." That is all what they told me.

Q. You didn't know what was in the paper, then?

A. Not a bit. And just what they told me, "Well, it is all right, we have proved up now," they said.

Q. You said in your testimony here yesterday that you didn't sell that claim to anbody.

A. No, sir; I took that claim for my own use.

Q. Didn't somebody pay you some money there for that claim?

A. Down to Hudson?

Q. Yes.

A. No, sir.

Q. Yes; at Hudson.

A. No, sir; not a cent.

Q. Didn't anybody pay you anything for it afterwards?

A. No, sir.

Q. Then the only money that you ever got for what you did up there at Superior was the money Stinson paid you down at Taylor's Falls, was it?

A. Yes.

Q. And if you signed a deed to Stinson down there at Hud-
299 son you didn't know it; is that right?

A. I don't think I have signed it, and probably I have and I don't know; I forgot it.

Q. I say, if you signed a deed you didn't know it?

A. Don't know it? If I signed a deed I didn't know.

Q. Did anybody tell you you were to sign a deed to Stinson?

A. No, sir.

Q. Deeding him this claim of yours?

A. No, sir; nobody told me so.

Q. Then you didn't know that you signed any deed down there?

A. No, sir; I didn't know; I couldn't understand nothing at all; if I signed it or not, I can't tell.

Q. How much land did you clear up there on your claim?

A. Oh, well, I clear so I had a good chance for a shanty there and make a little fence around it.

Q. How large a yard did you make, inside of the fence?

A. Oh, well, I don't step it off. I don't care so much for that either. Probably half an acre and so forth. I can't tell.

Q. How wide was it?

A. Oh, four or five rods square.

Q. Four or five rods square?

A. Somewhere like that; I can't tell how many.

Q. Well, now, there was growing on that, in that four or five rods square, when you went over there, trees or brush, was there?

A. Oh, brush and small trees, what they call brush, and spruce and fir trees.

Q. Was it growing pretty thick?

A. Awful.

Q. Very thick, eh?

A. Yes, sir.

Q. What did you do?

A. Why, cut them down and push them out of the way, and grade up a place to build the shanty, and grade up a little more.

Q. What do you mean by clearing up; you just simply cut this brush and threw it to one side?

A. Yes; and going to make a clearing there. There was popple and big woods around there.

Q. You didn't plow there, did you?

A. No.

Q. Didn't have any plows there, did you?

A. No; I don't think.

Q. Did you spade it up?

A. Yes; I spaded it up.

Q. How much did you spade up?

A. Oh, well, so much I could plant a little beans and a few potatoes there.

Q. How many beans did you plant?

A. Oh, I don't count them.

Q. Did you plant a handful?

A. Oh, probably a little more and probably a little less, I can't tell; I didn't count them.

300 Q. After you got through there at the land office, you went back to Chisago, did you?

A. Yes, sir.

Q. What did you go to doing then?

A. I took a piece of land there and tried to begin to make my home there.

Q. Whom did you get the land of?

A. From the Government?

Q. How much land did you take?

A. Forty acres.

Q. Was it a preemption?

A. No.

Q. Homestead?

A. No; it was no homestead then.

Mr. SANBORN. It was a cash entry, was it? You paid the money for it?

WITNESS. Yes; I paid the money for it, a cash entry for forty acres; it was the Government at that time—there was no homestead land before Lincoln was elected.

Q. Where did you make that cash entry?

A. Stillwater.

Q. Was that done right away after you left Hudson?

A. No; it was some time afterwards.

Q. The same fall, was it?

A. I guess it was the spring after.

Q. What did you do during that winter?

A. I went up in the woods and worked in the lumber business for a lumberman.

Q. Your wife stayed there at Chisago, did she?

A. Yes, sir.

Q. Your home remained there with your brother until you entered this land at Stillwater, did it?

A. Yes.

Q. And did you move onto your forty acres then?

A. Moved on that summer that I paid for it; I think it was in the spring I came from the woods. I went down and paid for it, and put up a little log shanty, so we could move on.

Q How long did you live on that forty, Mr. Norell?

A. Well, what do you think I can recollect such a thing so far back? Was it four, or five, or six, or seven years, I can't tell.

Q. You told me a while ago that you went from Chisago over into another county.

A. Yes; to Isanti.

Q. Well, did you live on this forty until you went over there?

A. Yes, sir; I sold that out and went over to Isanti and took a homestead after Lincoln was elected President.

Q. Have you ever been back there to Superior since you went up there in the fall of 1854?

A. I went there once.

Q. When was that?

301 A. Twenty-five years or thirty, I think; I can't tell. I went up there just when the railroad went into Duluth the first time, and I went across there and looked around.

Q. During all that time you never went up there to look after this claim of yours?

A. No.

Q. Did you ever ask anybody about it?

A. What?

Q. During all that time did you ask anybody about the claim?

A. Ask about the claim?

Q. Did you ask anybody about the claim?

A. No; I can't tell.

Q. Never paid any more attention to it after you went down to Hudson, did you?

A. No.

Q. When did you first hear about that land again, Mr. Norell?

A. Ten or twelve years ago.

Q. Was it when a man by the name of Streeter called to see you?

A. Streeter?

Q. Yes.

A. Yes.

Q. You had then been in the country some thirty-five years, hadn't you?

A. This country?

Q. Yes.

A. Thirty-five years?

Q. Yes.

A. I have been here over forty.

Q. I mean when this man Streeter called to see you.

A. Oh, yes; I had been living in Chisago.

Q. Well, you had learned to talk English by that time, hadn't you?

A. Oh, I talked a little.

Q. Talked about as you do now?

A. Oh, I guess just about the same.

Q. And had you learned to write English?
A. No, sir.
Q. You can write your name, can't you?
A. Just about write my name, that is all.
Q. You wrote your name to this testimony of yours, didn't you, yesterday?
A. Yes.
Q. That is your signature there?
A. Yes; that is my name.
Q. And you could write just about the same ten years ago, couldn't you?
A. Well, hardly; I have learned a little better since.
Q. Was there anybody with this man Streeter when he called to see you?
A. No; we was alone upstairs there.
Q. You talked the matter over with him?
A. He talking to me, he say to me he going to help me to get the land back.
Q. I say you and he talked it over together there?
A. Yes.
Q. Alone?
A. Alone; yes.
Q. Well, then, did you go before a notary public, a man named Shaleen?
302 Mr. SANBORN. A clerk of court.
Q. Did you go down before the clerk of court?
A. To the clerk of court?
Mr. SANBORN. At Centre City.
WITNESS. Yes.
Q. Went down there with Streeter, did you?
A. Well, went downstairs in that room there.
Q. In Centre City?
A. Yes.
Q. Did you know the clerk, Mr. Shaleen?
A. I just know him a little.
Q. Well, you saw him down there, didn't you?
A. Down to Centre City?
Q. Yes, sir.
A. Yes.
Q. And did you swear to an affidavit there before him?
A. An affidavit——
Q. Did you sign a paper and swear to it before him?
A. Yes.
Q. Will you look at this paper that I show you now, and state whether that is your name that you signed there at that time?
[Witness compares his hand with the signature to testimony.]
A. Well, that [meaning the affidavit] looks better than that now.
Q. The first one looks better than the one you signed yesterday?
A. Yes. That name looks better than this one what I done now. You can see it yourself.
Q. Yes; I think that is right; it is better. You were younger then.

A. Oh, well, I don't know.

Q. Well, is that the paper that you signed there?

A. Well, I don't know; it looks—it seems to me it is my name.

Q. It looks like your signature, don't it?

A. Well, it looks like my name, anyhow.

Q. Did Mr. Shaleen or Mr. Streeter read this paper over to you, at the time you signed it or before?

A. Mr. Streeter, he read it over, and he read it when he have write it off; he don't read it right to me.

Q. He didn't read it right to you?

A. He jumped across the lines where I said I got my own shanty there, then he jumped across.

Q. He jumped over that?

A. Yes, sir. Then I wasn't sure of his writing, and I told Shaleen, "You can read it over." He took it and looked around, and he say, "Oh, that is all right," he say. You see I can't read a word of English myself.

303 Q. Can't you read English now?

A. No, sir; I never did.

Q. How do you know he didn't read this right, them?

A. I wasn't sure. I wouldn't believe what Streeter read, I wouldn't believe him.

Q. Well, you didn't know whether he read it right or not?

A. No, sir; I didn't know.

Q. So you asked Shaleen to read it for you, did you?

A. Yes, and he read it over, and he said, "Oh, this is all right," and Streeter, he say he wants to help us get all the land back; and about three or four weeks afterwards I see myself in the paper, he put it in the paper, and it say there them fellows went up there to Superior and entered that land, preempted land about forty years ago, so long ago—they going to go up there, they got the right to go up there now and build a shanty and they own the land. That is what I see in the paper. A Swede paper—my paper. He had put it in there.

Q. He didn't print a copy of this affidavit of yours in there, did he?

A. Eh?

Q. Did he print a copy of this paper that you signed in the newspaper; was there a copy of this paper that you signed in there?

A. No, no; there was just a few lines, and it said the fellows got a preemption there, they going to get the land back, and they could just go up there and live there and build a house there. Oh, no; they didn't put that in there.

(The paper identified by witness was marked for identification "Complainant's Ex. A 1.")

Q. You say that Stinson told you he was going to help you get the land, or Streeter?

A. Streeter.

Q. Told you he was going to help you get the land?

A. Yes, Streeter; Streeter told me. That is what he said at that time I was over to Centre City. I asked him what to do.

Q. Did you know who had the land?

A. Oh, well, what he say that Stinson got it, and now he going to get it from Stinson and let us have it back.

Q. Did he tell you how he was going to get it back?

A. Oh, he didn't say anything only, "I going to help you get the land back. It was all a swindle what Stinson done."

Q. Did he tell you how it was a swindle?

(Counsel for the defendent objected to the question as incompetent, irrelevant, and immaterial.)

304 A. He say he got fellows from Chisago that didn't understand he was going to swindle them out of the preemption land, that didn't talk English or nothing like that; he say it was all a swindle, and he say we going—he said, "I going to help you get it back."

(Counsel for defendants moves to strike out the answer of the witness for the reason that statements by Streeter to the witness are incompetent, irrelevant, and immaterial.)

Q. Did you say Streeter told you that Mr. Stinson had swindled the Government out of this land?

(Counsel for the defendants objected to the question as incompetent, irrelevant, and immaterial.)

A. He didn't swindle the Government; they swindled us. They make a preemption for him that don't understood English or nothing, and Stinson get somebody else that understands English, and take a greenhorn, all of us greenhorns, going up there, and hire us to go up there and work, and then go and take and make a preemption for him—that is a swindle.

(Counsel for defendants moves to strike out the answer of the witness for the reason that statements by Streeter to the witness are incompetent, irrelevant, and immaterial.)

Mr. SANBORN. That is what Streeter said?

WITNESS. Yes.

Q. And after that explanation of the matter by Mr. Streeter you signed this paper, did you?

A. Well, since Shaleen read it over, and he said, "Oh, yes, the paper is all right," he say—Shaleen—and then I thought it was sure what he said to me. He read it over and he say, "Oh, this paper is all right," he say, "and you can sign it," he say.

Q. Now, you didn't answer my question, Mr. Norell. You signed that paper after Mr. Streeter had explained this matter to you about its being a swindle?

A. Yes; yes, sir. Yes, sir; he told me before I signed the paper that was all a swindle about it, between us and Stinson. He got up and talked, and he was just going to get the land back, and we was going to have it back and have it all right. And then he read it over to me, and I wouldn't believe him; probably I understood some and probably not.

305 Redirect examination by Mr. SANBORN:

Q. Is Nils Berg dead?

A. Yes, sir; he died at the hospital in St. Peter here.

Q. He was insane? He was crazy?

A. In the hospital in St. Peter—he was crazy; yes. He died three or four years ago.

Q. Now, did Mr. Streeter, when he read this paper over—did he read

something to you which said that you never had made any improvement or any building on the land?

A. He never. He never say so. If I heard he say so I would say "Stop," right square off. I couldn't tell anything that he wrote across them lines.

Q. Did Mr. Streeter do a good deal of talking?

(Objected to by counsel for complainants as leading and suggestive.)

A. Oh, he talked. I just talked the matter over and that is what he done.

Q. Did he talk loud?

A. Oh, there was the two together upstairs. No one around there.

Q. You didn't go down to Centre City with Streeter, did you?

A. No, sir; he sent for me to come down there.

(It is stipulated that the reading over of the cross-examination to the witness and his signature thereto are hereby waived.)

Certificate of notary.

United States circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
against
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS. } In equity.

I, Frederick Gosewisch, a notary public in and for Ramsey County, Minnesota, hereby certify that on the 12th and 13th days of June, 1899, I took the depositions of George N. Hillman and Peter Norell, at the county court-house in the city of Saint Paul, Ramsey County, in the district of Minnesota; that at the taking of the direct examination of said witnesses I was attended by Robert M. Bashford and Arthur L. Sanborn, solicitors for the defendants, and that at the cross-examination of said witnesses I was attended by said solicitors on the part of the defendants and by John B. Simmons, counsel for the complainants; that it was stipulated by the parties that said depositions should have
306 the same effect as if counsel for the complainants had been present at the taking of such direct examination as well as of the cross-examination; that the said witnesses, before giving their testimony, were duly and publicly cautioned and sworn by me to tell the truth, the whole truth, and nothing but the truth, relative to said cause, and were carefully examined; that the direct examination of said witnesses was read over to them and afterwards signed by them, as appears in said depositions; that the reading over and signature of the witnesses to the cross-examination was waived by the stipulation of parties; that I am not and never have been attorney or of counsel for any or either of the parties; that I have sealed up the said depositions, for the purpose of returning them to F. W. Oakley, clerk of the circuit court of the United States for the western district of Wisconsin, at Madison, Wisconsin, and have retained them in my possession for that purpose and until the same were by me deposited in the post-office to be sent to said clerk through the mails.

[L. S.]

FRED W. GOSEWISCH,
Notary Public, Ramsey Co., Minnesota.

Witness fees.
Notary's fees, $36.00.
Total.
Paid by defendants' solicitors.

Afterwards, to wit, September 16, 1899, filed depositions of James Bardon and Michael S. Bright, taken before George R. Hughes, at Superior, Wisconsin, on the 15th day of June, 1899, as follows:

307 United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The depositions of James Bardon and Michael S. Bright taken before the undersigned, a notary public for Douglas County, Wisconsin, at the office of said Bright in Superior, Wisonsin, on the 15th day of June, 1899.

John B. Simmons appearing for complainant.
A. L. Sanborn appearing for defendants.

Deposition of James Barden.

JAMES BARDEN, being duly sworn, testified as follows:

By Mr. SANBORN:

My name is James Bardon. My age is fifty-four. My residence is Superior, Wisconsin. I have lived here since July, 1857. My business is dealing in lands. I have dealt in lands for over thirty years in this vicinity. I think that I am acquainted with the value of lands in what is now the city of Superior, and have been so acquainted for a great many years.

Question. What, in your opinion, is the present market value of the southwest quarter of section 28, town. 49, range 14 west?

(Objected to by complainant's counsel on the ground that it is immaterial, irrelevant, and incompetent.

Stipulation: It is stipulated that counsel for complainants may, at the hearing, interpose any objection which he might make at this time. This stipulation is made to save interruptions. This stipulation shall apply to any question or answer of any witness at this examination.)

Answer. Sales of such lands have been so few during the past few years that it is not easy to say what is the market value. My opinion is that the land is worth about $100 per acre at this time.

The northwest quarter of sec. 33–49–14 would be about the same value. The northwest quarter of sec. 26–49–14, I should say, is worth from $300 to $400 per acre, the northerly part is worth a little
308 more than the southerly part. The northwest quarter of sec. 35–49–14 is worth about $100 per acre. The southwest quarter of sec. 35–49–14 is about the same.

As to the northeast quarter of sec. 2–48–14; the northwest quarter of sec. 1–48–14 and the northeast of sec. 1–48–14; the northeast quarter

of sec. 6–48–13; the northwest of sec. 5–48–13; the northeast quarter of sec. 5–48–13; the northwest quarter of sec. 4–48–13; the northeast quarter of sec. 4–48–13, I would put all of these at about $100 per acre.

As to the southeast of sec. 1–48–13, I would put at about $75 per acre.

All of these lands I have testified about are within the present corporate limits of the city of Superior, Wisconsin.

My recollection is that there was little or no sale for lands *for lands* in this vicinity from the panic of 1857 to down to the year 1882 or 1883.

A large proportion of the lands in Douglas County were sold for taxes in the year 1859, and this continued until 1880.

From the year 1857 to 1882 the value of these lands would range from $5 per acre to $25 per acre, as near as I can remember.

I judge this from some sales of lands in this vicinity and from what was asked for lands in this vicinity during that period.

Lands in Superior and in this vicinity reached their highest value in 1890 and 1891.

I think that these lands are now worth about twenty per cent of what they were worth in 1890 and 1891.

Cross-examination:

These lands have been within the city limits of Superior since 1889, when the city was incorporated.

I have been over all of the Stinson lands. They have been in my charge as agent; at one time as agent of James Stinson, one of the defendants in this action. I acted as agent to pay taxes and to protect the lands for a few years. I think I so acted from about 1875 to about 1891 or 1892. Mr. Stinson was accustomed to pay his taxes during that period. Once or twice, in the years back, I think they were sold for taxes. I do not remember what years the lands were sold for taxes, the records will show that. Each of the other years, while I was acting as agent, I think I paid the taxes without allowing the lands to go to tax sale. Stinson purchased the lands from the county and secured the county's quitclaim. I suppose that paid the taxes for that year by settling with the county. My recollection is that I transacted that business with the county for Mr. Stinson.

309 Q. Did you allow those lands to be sold in 1877 with a view of perfecting Mr. Stinson's title through a tax deed?

A. I do not remember anything about that.

The population of Superior in 1880 was not exceeding 500. The present population of Superior is about 27,000. In 1890 there were about 12,000 people here.

I have now no business relations with either James Stinson or Henry J. Stinson. I am not acting for either of these parties in looking after any of these lands at this time. I do not know that either of these gentlemen have any general agent at this time.

Values commenced to go down as to these lands in 1893. The decline was gradual for nearly a year. Then the values got nearly down to the prices of to-day. At the beginning of the year 1894 they were down to nearly the present values.

The northwest quarter of sec. 26–49–14 is a mile from the business quarter of the city. It is built up some between this tract and the busi-

ness center. There is a good many residences. I base my estimate of the value of that tract from actual sales of which I have knowledge, to some extent. The land on the south side of the sec. 26 land is subdivided into blocks, also on half of the east side into lots, on the north side into lots; the west side is still in acres, except a tract of about five acres which is platted. The business part of West Superior is in a northwesterly direction from this tract. My recollection is, that forty acres on the east side is owned by the estate of Geo. W. Norton, of Louisville, Ky., John J. Murphy, of Woodstock, Ill., and James Kasson, of St. Paul, jointly, and on the west side the Land and River Company, I think.

About a year or year and a half ago I sold to Harry C. Sloan, of West Superior, twenty acres in the adjoining section, being the west half of the southeast quarter of the southwest quarter of sec. 27, at $100 per acre, subject to about $1,000 of taxes, which would make the land cost about $150 per acre. I also sold the northeast quarter of the southeast of the northeast quarter of sec. 23–49–14 about two years ago, to Senator Spooner, at $400 per acre. There has been very little demand for lands of this class and very few sales within the last few years. In some cases the owners of lands inside the city limits hold the lands at much higher prices than I have stated.

Redirect:

There is no dwelling house or other buildings of any kind on the plat covering the southwest quarter of sec. 26–49–14. There is one unoccupied frame building on Slaughter's addition, east of northwest quarter of sec. 26, built for a pest house. There is no building in the small addition on the northeast quarter of sec. 27.

JAMES BARDON.

Deposition of Michael S. Bright.

MICHAEL S. BRIGHT, being first duly sworn, testified as follows:

Examined by Mr. SANBORN:

Question. State your name, age, residence, and occupation.

Ans. My name is Michael S. Bright; age, 33; residence, Superior, Wisconsin, and occupation, attorney. I have lived in Superior since July, 1890.

Q. Will you make out from the records in the office of the county clerk of Douglas County a correct statement of all taxes paid or redemptions made upon the lands described in the bill of complaint in this case, showing the descriptions of the lands, the amount of tax for each year, by whom and when paid or redeemed, and attach the same to this your deposition, attaching also your affidavit thereto, to the effect that the same is a true and correct statement of all matters contained therein, and have the same marked by the notary as "Exhibit A2" hereto?

Ans. I will do so.

Q. Will you also prepare a statement showing the amount of taxes unpaid upon said lands, showing year of sale, description of land, number of certificate, and by whom the certificate is held, as appears from said record, and attach thereto a like affidavit and have the same marked "Exhibit A3?"

Ans. I will do so.

(It is stipulated that such statements shall be received subject to the objections that the same are incompetent, irrelevant, and immaterial, but no objection is to be made for the reason that the same are not certified, or are copies, or are not made by the proper officers.

Counsel for defendant offers in evidence the following documents, and asks to have the same marked as follows: A tax deed to Douglas County, dated September 2, 1880, recorded in Book 3 of Tax Deeds, page 76, marked "Exhibit A4."

The record of a certain suit brought by Douglas County, in 1880, for the foreclosure of said tax deed, including the summons return of service, complaint, affidavit, and order of publication, proof of publication, default and judgment, marked "Exhibit A5."

Stipulated that in making the copy of said record all lands may be omitted except the lands in suit, it being admitted that said foreclosure covered a large amount of other lands, including the lands described in the quitclaim deed introduced as "Exhibit A6," and it is also stipulated that in copying such tax deed all lands may be omitted except those in suit, in order to save expense of copying and printing.

311 Defendants offer in evidence a quitclaim deed from Douglas County to James Stinson, dated June 20, 1881, recorded in Book 3 of Tax Deeds, page 270, and following and asks to have the same marked "Exhibit A6."

Also a deed from James Stinson to George L. Brooks, dated May 19, 1882, for twenty acres of land in northwest quarter and lot 7, sec. 1, 48–14, recorded in Book "O" of Deeds, page 200, June 7, 1882, and asks to have the same marked "Exhibit A7."

Also, deed from James Stinson to Northern Pacific R. R. Co., dated Aug. 10, 1881, for part of NE. ¼ sec. 2–48–14, and asks to have the same marked "Exhibit A8."

Also a deed from James Stinson to C., St. P., M. & O. Ry. Co., dated October 3, 1881, of part of NW. ¼ sec. 4–48–13, and asks to have the same marked "Exhibit A9."

Also, decree of condemnation by Duluth, South Shore and Atlantic Ry. Co., made in 1889, of part of NW. ¼ 26–49–14, and asks to have the same marked "Exhibit A10."

Also a decree of condemnation by N. W. Coal Ry. Co. in 1894 of parts of sects. 5 and 6–48–13, and asks to have the same marked "Exhibit A11."

Also a deed from Henry J. Stinson to the Superior Short Line Ry. Co. for 22 13 100 acres in NW. ¼ of 4–48–13, and asks to have the same marked "Exhibit A12."

Also deed from Henry J. Stinson to Edwin W. Winter of NE. ¼ of NW. ¼ 4–48–13, and asks to have the same marked "Exhibit A13."

Also a right-of-way deed to Duluth, South Shore and Atlantic Ry. Co. of lands in 5–48–13, and asks to have the same marked "Exhibit A14."

Stipulated, that all such records are received subject to the objection that the same are incompetent, irrelevant, and immaterial, but not on the ground that they are copies or are not properly or authenticated.)

MICHAEL S. BRIGHT.

312 DEFENDANT'S EXHIBIT A2.—*Statement. Geo. R. Hughes, notary.*

Statement of all taxes paid or redeemed on lands in this action from 1857 to 1891, inclusive. There is no record of payments prior to 1857.

Northwest quarter sec. 26, township 49, range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A., jr	$ 24.70	
1858	James Stinson	Pd	$ 49.56	
1859	Not paid sold in 62 for taxes of 59–60–61		See note 1 hereto	
1859	Do.		Do.	
1860	Do.		Do.	
1861	Do.		Do.	
1862	James Stinson	Paid per E. W. A., jr...	$ 9.02	Feby. 28, 63
1863	James Stinson	Paid Jas. Stinson.....	$ 22.25	July 25 64
1864	James Stinson	Paid per P. P. W	$ 26.94	July 14 65
1865	Not paid—Not sold.			
1866	No name on roll	Paid D. G. M	$ 19.52	
1867	James Stinson	Paid	$ 40.32	Dec. 30, 1867
1868	James Stinson	Paid	$ 41.52	Mch. 15 69
1869	James Stinson	Paid	$ 39.10	March 2 70
1870	James Stinson	Paid	$ 28.80	March 2 71
1871	James Stinson	Paid M. M.....	$ 30.00	Feby. 28 72
1872	James Stinson	Paid by M. Macara.....	$ 44.16	Feby. 28 73
1873	Not paid	Sold in 1874	See note 1 hereto.	
1874	Jas. Stinson	Pd. by J. B. Culver	$ 33.05	2 24 75
1875	Not paid	Not advertised		
1876	Not paid	Sold in 1877	See note 1 hereto	
1877	Do.	Do. 1878	Do.	
1878	Do.	Do. 1879	Do.	
1879	Do.	Do. 1880	Do.	
1880	Do.	Do. 1881	Do.	
1881	James Stinson	Paid	$ 60.48	Apr. 10 82
1882	James Stinson	Owner	$ 39.42	1 18 83
1883	James Stinson	Jas. Stinson per J. B....	$ 119.59	Jany 5 84
1884	James Stinson	J. Stinson per J. B	$ 196.56	April 10, 1885
1885	James Stinson	J. Stinson per J. B	$ 146.16	Feby 26 1886
1886	James Stinson	Pd. by J. Stinson.....	$ 137.12	Mch. 10 87
1887	James Stinson	Pd. by James Stinson ...	$ 738.24	Jany 17 88
1888	James Stinson	Pd. by James Stinson ...	$1,822.80	Mar. 9 89
1889	James Stinson	James Stinson	$3,485.50	5 19 90
1890	James Stinson	James Stinson	$3,254.64	3 12 91
1891	James Stinson	James Stinson	$5,492.50	Mar. 10 92

313 Southwest Quarter Section 28, Township 49 Range 14

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A., jr.....$	10.58	
1858	James Stinson	Pd.....$	7.43	
1859	Not paid—Not sold			
1860	James Stinson	Pd. (Del. Roll).....$	8.00	March 7 1863
1861	James Stinson	Pd Do. T. R ...$	10.15	
1862	James Stinson	Paid per E. W. A., jr ..$	6.76	Feby 28 1863
1863	James Stinson	Paid Jas. Stinson .....$	13.68	July 25/64
1864	James Stinson	Paid P. P. W.....$	16.57	July 14.65
1865	Not paid			
1866	No name on roll	Pd. by D. G. M .....$	12.20	
1867	James Stinson	Paid.....$	12.60	Dec. 30 1867
1868	James Stinson	Paid.....$	20.77	Mch. 15/69
1869	James Stinson	Paid.....$	23.48	March 2/70
1870	James Stinson	Paid.....$	17.28	March 2/71
1871	James Stinson	Paid M. M .....$	20.68	Feby 29/72
1872	James Stinson	Paid by M. Macara ....$	27.60	Feby 28/73
1873	Not paid	Sold in 1874	See note 1 hereto	
1874	James Stinson	Pd. J. B. Culver..... $	13.22	2 24/75
1875	James Stinson	T. R .....$	24.00	1/8/76
1876	Not paid	Sold in 1877	See note 1 hereto	
1877	Do.	Do. 1878	Do.	
1878	Do.	Do. 1879	Do.	
1879	Do.	Do. 1880	Do.	
1880	Do.	Do. 1881	Do.	
1881	James Stinson	Paid (Del. Roll).....$	30.24	Apr. 10 1882
1882	James Stinson	Owner ....$	21.59	1/18/83
1883	James Stinson	J. Stinson per J. B.....$	68.21	Jany 5.84
1884	James Stinson	J. Stinson per J. B.....$	88.00	April 10 1885
1885	James Stinson	J. Stinson per J. B.....$	54.81	Feb. 26 1886
1886	James Stinson	Pd by James Stinson ...$	72.66	Mch. 10 87
1887	James Stinson	Pd by James Stinson ...$	103.48	Jany 17 88
1888	James Stinson	James Stinson.....$	612.15	Mar 9.89
1889	James Stinson	James Stinson.....$	1,290.24	5 19 90
1890	James Stinson	James Stinson.....$	959.04	3 12/91
1891	James Stinson	James Stinson.....$	1,651.20	Mch. 10 92

314 Northwest Quarter Section 33, Township 49 Range 14

Year	Names of owner on tax roll	By whom paid	Amount		Date
1857	James Stinson	E. W. A., jr	$ 10.58		
1858	James Stinson	Pd	$ 7.43		
1859	Not paid; sold in 62 for taxes of 59–60–61		See note 1 hereto		
1860	Do. Do.				Do.
1861	Do.				Do.
1862	James Stinson	Paid per E. W. A., jr.	$ 5.64	Feby	28 63
1863	James Stinson	Jas. Stinson	$ 10.27	July	25/64
1864	James Stinson	Paid per P. P. W	$ 12.43	July	14 65
1865	Not paid.				
1866	No name on roll	Pd. by D. G. M	$ 11.18		
1867	James Stinson	Paid D. G. M	$ 10.88	Dec.	30/67
1868	James Stinson	Paid	$ 20.77	Mch.	15/69
1869	James Stinson	Paid	$ 19.55	March	2.70
1870	James Stinson	Paid	$ 14.40	March	2,1871
1871	James Stinson	Paid M. M	$ 20.68	Feby	29/72
1872	James Stinson	Paid by M. Macara	$ 27.60	Feby	28/73
1873	Not paid	Sold in 1874	See note 1 hereto		
1874	James Stinson	Pd by J. B. Culver	$ 9.92		2/24/75
1875	James Stinson	T. R	$ 7.20		1/8/76
1876	Not paid	Sold in 1877	See note 1 hereto		
1877	Do.	Do. 1878	Do.		
1878	Do.	Do. 1879	Do.		
1879	Do.	Do. 1880	Do.		
1880	Do.	Do. 1881	Do.		
1881	James Stinson	Paid	$ 22.68	Apr.	10.82
1882	James Stinson	Owner	$ 17.24		1/18/83
1883	James Stinson	J. Stinson per J. B.	$ 34.10	Jany	5.84
1884	James Stinson	J. Stinson per J. B.	$ 44.00	April	10 1885
1885	James Stinson	J. Stinson per J. B.	$ 36.54	Feb.	26 1886
1886	James Stinson	Pd by James Stinson	$ 36.31	Mch.	10/87
1887	James Stinson	Pd by James Stinson	$ 206.96	Jany	17/88
1888	James Stinson	Pd. James Stinson	$ 306.12	Mar.	9.89
1899	James Stinson	James Stinson	$ 645.12		5/19/90
1890	James Stinson	James Stinson	$ 767.12		3 12/91
1891	James Stinson	James Stinson	$1,032.00	Mch.	10/92

315 Northwest Quarter Section 35 Township 49 Range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. Jr.....$	17.64	
1858	James Stinson	Pd .....$	39.64	
1859	Not paid Sold in 62 for taxes of 59–60–61 See note 1 hereto			
1860	Do.	Do.	Do.	
1861	Do.	Do.	Do.	
1862	James Stinson	Paid per E. W. A. Jr...$	9.02	Feby. 18 1863
1863	James Stinson	Paid Jas Stinson.....$	13.68	July 25/64
1864	James Stinson	Paid pr P. P. W.....$	16.57	July 14.65
1865	Not paid			
1866	No Name on Roll	Pd by D. G. M.....$	16 26	
1867	James Stinson	Paid D. G. M .....$	25.20	Dec. 30 1867
1868	James Stinson	Paid .....$	20.77	Mch 15/69
1869	James Stinson	Paid .....$	31.30	March 2 70
1870	James Stinson	Paid .....$	17.28	March 2 71
1871	James Stinson	Paid M. M .....$	27.60	Feby. 29 72
1872	James Stinson	Paid by M. Macara ....$	27.60	Feby 28 73
1873	James Stinson	Not Paid Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd. by J. B. Culver ....$	16.52	
1875	James Stinson	T. R .....$	12.00	1/8 76
1876	Not Paid	Sold in 1877	See note 1 hereto	2 24 75
1877	Do.	Do. 1878	Do.	
1878	Do.	Do. 1879	Do.	
1879	Do.	Do. 1880	Do.	
1880	Do.	Do. 1881	Do.	
1881	James Stinson	Paid .....$	31.80	Apr. 10 82
1882	James Stinson	Owner.....B..$	29.56	1 8 83
1883	James Stinson	J. Stinson per J. B.....$	5.94	Jany 5. 84
1884	James Stinson	J. Stinson pr J. B.....$	98.28	April 10 1885
1885	James Stinson	J. Stinson pr J. B.....$	72.06	Feb. 26 1886
1886	James Stinson	James Stinson .....$	68.60	March 10 87
1887	James Stinson	Pd by James Stinson ...$	282.72	Jany 17. 88
1888	James Stinson	James Stinson .....$	729.12	Mar. 9.89
1889	James Stinson	James Stinson.....$	1,354.40	5 19 90
1890	James Stinson	James Stinson.....$	1,466.28	3 12 91
1891	James Stinson	James Stinson.....$	1,608.20	Mch. 10 92

316 Southwest Quarter, Section 35 Township 49 Range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. Jr.....$	17.64	
1858	James Stinson	Pd.....$	39.64	
1859	Not paid	Sold in 62 for taxes of 59–60–61		See note 1 hereto.
1860	Do.	Do.		Do.
1861	Do.	Do.		Do.
1862	James Stinson	Paid per E. W. A. Jr..$	9.02	Feby 28. 1863
1863	James Sinson	Paid Jas. Stinson.....$	13.68	July 25 64
1864	James Stinson	Paid pr P. W.....$	16.57	July 14.65
1865	Not paid			
1866	No name on tax roll	Pd by D. G.....$	16.26	
1867	James Stinson	Paid.....$	20.16	Dec. 30 1867
1868	James Stinson	Paid.....$	22.77	Mch. 15 69
1869	James Stinson	Paid.....$	31.30	March 2 70
1870	James Stinson	Paid.....$	17.28	March 2/71
1871	James Stinson	Paid M. Macara.....$	27.60	Feby 29/72
1872	James Stinson	Paid by M. Macara ....$	27.60	Feby 28/73
1873	James Stinson	Not paid Sold in 1874		See note 1 hereto
1874	James Stinson	Pd by J. B. Culver ....$	16.52	2 24 75
1875	James Stinson	T. R.....$	12.00	1 8/76
1876	Not Paid	Sold in 1877		See note 1 hereto.
1877	Do.	Do. 1878	Do.	
1878	Do.	Do. 1879	Do.	
1879	Do.	Do. 1880	Do.	
1880	Do.	Do. 1881	Do.	
1881	James Stinson	Paid.....$	31.80	Apr. 10 82
1882	James Stinson	Owner.....$	29.56	1 8 83
1883	James Stinson	J. Stinson per J. B.....$	5.94	Jany. 5. 84
1884	James Stinson	J. Stinson pr. J. B.....$	98.28	April 10 1885
1885	James Stinson	J. Stinson pr. J. B.....$	72.06	Feb. 26 1886
1886	James Stinson	James Stinson.....$	68.60	March 10. 87
1887	James Stinson	Pd. by James Stinson...$	282.72	Jany 17. 88
1888	James Stinson	James Stinson.....$	729.12	Mar. 9 89
1889	James Stinson	James Stinson.....$	1,394.40	5 19 90
1890	James Stinson	James Stinson.....$	1,466.28	3 12 91
1891	James Stinson	James Stinson.....$	1,608.20	Mch. 10. 92

317 Lots 1, 2, 3, section 1, township 48, range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date.
1857	James Stinson	Paid E. W. A Jr.....$	16.03	
1858	James Stinson	Pd.....$	22.54	
1859	Not paid	Sold in 1862 for taxes of 59–60–61	See note 1 hereto.	
1860	Do.	Do.		Do.
1861	Do.	Do.		Do.
1862	James Stinson	Paid per E. W. A..... $	10.24	Feby. 28 1863
1863	James Stinson	Paid Jas. Stinson.....$	12.45	July 25/64
1864	James Stinson	Paid per P. P. W .....$	15.07	July 14/65
1865	Not paid			
1866	No name on roll	Paid by D. G. M.....$	17.48	
1867	James Stinson	Paid .....$	16.06	Dec. 30/67
1868	James Stinson	Paid .....$	18.81	Mch. 15/69
1869	James Stinson	Paid ....$	28.36	March 2. 70
1870	James Stinson	Paid .....$	20.88	March 2. 1870
1871	James Stinson	Paid M. M.....$	25.00	Feby 29 72
1872	James Stinson	Paid by M. Macara.....$	20.52	Feby 28/73
1873	Not paid	Sold in 1874. See note 1 hereto.		
1874	James Stinson	Lot 1 Pd by L. T. Slayton.....$	3.20	Dec. 31. 1874
		Lot 2 Pd by J. B. Culver.$	7.94	2 24/75
		Lot 3 Pd. by J. B. Culver.$	6.82	2 24 75
1875	James Stinson	T. R..... .....$	13.04	1/8 76
1876	Not paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid by J. Stinson .....$	35.15	Apr 10 82
1882	James Stinson	Owner .....$	29.48	1/18 83
1883	James Stinson	J. Stinson pr J. B.....	60.97	Jany 5/842
1884	James Stinson	J. Stinson pr J. B.....$	80.05	April 10 1885
1885	James Stinson	Jas. Stinson pr J. B.....$	49.69	Feb. 26 1886
1886	James Stinson	Pd by Jas Stinson.....$	16.60	Mch. 10 87
1887	James Stinson	Pd by James Stinson ....$	111.52	Jany 17 1888
1888	James Stinson	James Stinson .....$	277.63	Mar. 9 89
1889	James Stinson	James Stinson .....$	584.64	5 19/90
1890	James Stinson	James Stinson ....$	698.06	3 12 91
1891	James Stinson	James Stinson .....$	1,064.25	Mch 19 92

318 Northwest quarter section 1, township 48, range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. Jr	$ 17.80	
1858	James Stinson	Pd	$ 25.03	
1859	Not paid	Sold in 1877 See note 1 hereto		
1860	Do.	Do. 1878 Do.		
1861	Do.	Do. 1879 Do.		
1862	James Stinson	Paid per E. W. A. Jr	$ 9.09	Feby 28 1863
1863	James Stinson	Paid	$ 20.93	July 25 64
1864	James Stinson	Paid per P. P. W	$ 25.33	July 14 65
1865	Not paid			
1866	No name on roll	Pd. by D. G. M	$ 20.32	
1867	James Stinson	Paid	$ 30.56	Dec. 30 67
1868	James Stinson	Paid	$ 15.57	Mch. 15 69
1869	James Stinson	Paid	$ 9.05	March 2 70
1870	James Stinson	Paid	$ 17.28	March 2 71
1871	James Stinson	Paid M. M	$ 20.68	Feby. 29 72
1872	James Stinson	Paid by M. Macara	$ 22.77	Feby 28 73
1873	Not paid	Sold in 1874 See note 1 hereto.		
1874	James Stinson	Pd by J. B. Culver	$ 19.94	2 24 75
1875	James Stinson	T. R	$ 14.48	1 8 76
1876	Not paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid by J. Stinson	$ 39.02	Apr. 10 82
1882	James Stinson	Owner (Part N.W. ¼)	$ 31.28	1 18 83
1883	James Stinson	J. Stinson (Part N.W. ¼)	$ 57.12	Jany 5 84
1884	James Stinson	J. Stinson pr J. B	$ 73.12	April10 1885
1885	J. Stinson	J. Stinson pr J. B. (Part)	$ 53.20	Feb. 26 1886
1886	James Stinson	Pd by James Stinson (Part N. W. ¼)	$ 42.00	Mch 10 87
1887	James Stinson	Pd by James Stinson (Part N. W. ¼)	$ 125.40	Jany 17 1888
1888	James Stinson	James Stinson (Part N. W. ¼ 154.60 A)	$ 294.65	Mar. 9 89
1889	James Stinson	James Stinson (Part N. W. ¼ 154.60 A.)	$ 620.92	5 19 90
1890	James Stinson	James Stinson (Und. 154.60 a N. W. ¼)	$ 926.66	3 12 91
1891	James Stinson	James Stinson (Und. 154.60 a in N. W. ¼)	$1,130.04	Mch. 10 92

319 Lot 7 section 1 township 48 range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date	
1857	James Stinson	Paid E. W. A. Jr	$ 15.73		

(Note. Lots 8 and 9 and N. W. ¼ of N. E. ¼ 1–48–14 in many years are included with lot 7. Where this is so the amounts given here will cover the other pieces without setting them out at length, but, in the statements of these other pieces where the payments are separated such will be shown.)

1858	James Stinson	Pd.....	$ 22.11		
1859	Sold in 62 for taxes of 59–60–61		See note 1 hereto		
1860	Do.		Do.		
1861	Do.		Do.		
1862	James Stinson	Paid E. W. A. Jr	$ 7.21	Feby.	28.63
1863	James Stinson	Paid	$ 19.83	July	25 64
1864	James Stinson	Paid pr P. P. W	$ 24.02	July	14 65
1865	Not paid				
1866	No name on roll	Pd by D. G. M.....	$ 17.48		
1867	James Stinson	Paid	$ 22.36	Dec.	30 67
1868	James Stinson	Paid	$ 18.49	Meh.	15 69
1869	James Stinson	Paid	$ 27.87	March	2.70
1870	James Stinson	Paid	$ 20.52	March	2 1871
1871	James Stinson	Paid M. M.....	$ 23.57	Feby	29 72
1872	James Stinson	Paid by M. Macara.....	$ 5.52	Feby	28 73
1873	Not paid	Sold in 1874.....	See note 1 hereto		
1874	James Stinson	Pd. by J. B. Culver	$ 4.96		2 24 75
1875	James Stinson	T. R.....	$ 3.60		1 8 76
1876	Not paid	Sold in 1877	See note 1 hereto		
1877	Do.	Do. 1878	Do.		
1878	Do.	Do.	Do.		
1879	Do.	Do.	Do.		
1880	Do.	Do.	Do.		
1881	James Stinson	Paid by J. Stinson	$ 33.91	Apr.	10 82
1882	James Stinson	Owner	$ 25.92		1 18 83
1883	James Stinson	J. Stinson pr J. B.....	$ 54.25	Jany	5 84
1884	James Stinson	J. Stinson pr J. B.....	$ 70.15	April	10 1885
1885	James Stinson	J. Stinson pr J. B.....	$ 45.67	Feb.	26 1886
1886	James Stinson	James Stinson	$ 21.92	Meh.	10 87
1887	James Stinson	James Stinson	$ 101.55	Jany	17 88
1888	James Stinson	James Stinson ..... (Part lot 7 26.20 A)	$ 74.61	Mar	9 89
1889	James Stinson	James Stinson (part lot 7 26.20 A).....	$ 157.25		5 19 90
1890	James Stinson	James Stinson (Und 26.20 A lot 7).....	$ 155.04		3 12 91
1891	James Stinson	James Stinson.....	$ 143.62	Meh.	9 92

320 Lots 8 and 9 section 1 township 48 range 14.

The taxes for the years 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871 are included in the statement of lot 7 *post* or in note 1 hereto and are found in either of those statements.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1873	James Stinson	Paid by M. Macara.		
		Lot 8 ..... $	5.20	Feby 28 73
		Lot 9 ..... $	4.14	Do.
1873	Not paid	Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd by J. B. Culver		
		Lot 8 ..... $	4.21	
		Lot 9 ..... $	3.34	2 24 75
1875	James Stinson	T. R. lot 8 ..... $	3.08	1 8 76
		Lot 9 ..... $	2.44	Do.
1876	Not paid	See note 1 hereto Sold in 1877		
1877	Not paid	Sold in 1878 See note 1 hereto		
1878	Not paid	See note 1 hereto Sold in 1879		
1879	Not paid	Sold in 1880 See note 1 hereto		
1880	Not paid	Sold in 1881 See note 1 hereto		
1881	Note: For 1881, 1882, 1883, 1884, 1885, 1886, 1887 see lot 7.			
1888	James Stinson	James Stinson ..... $	174.16	Mar 9 89
1889	James Stinson	James Stinson ..... $	366.91	5 19 90
1890	James Stinson	James Stinson ..... $	366.62	3 12 91
1891	James Stinson	James Stinson ..... $	335.40	Mch. 10 29

321 Northwest quarter of the northeast quarter section 1 township 48 range 14.

The amounts for the years 1857, 1858, 1859, 1860, 1861, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1881, 1882, 1883, 1884, 1885, 1886, 1887 are included in the amounts given for lot 7 post.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1862	James Stinson	E. W. A. Jr. Paid ..... $	2.82	Feby 28.63
1872	James Stinson	Paid by M. Macara ..... $	6.04	Feby 28 73
1873	Not Paid	Sold in 1874	See note 1 hereto.	
1874	James Stinson	Paid by J. B. Culver ..... $	4.96	2 24 75
1875	James Stinson	T. R. ..... $	3.60	1/8 76
1876	Not Paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1888	James Stinson	James Stinson ..... $	120.52	Mar. 9.89
1889	James Stinson	James Stinson ..... $	254.01	5 19 90
1890	James Stinson	James Stinson ..... $	254.34	3 12 91
1891	James Stinson	James Stinson ..... $	271.54	Mch. 10 92

322 Northeast quarter section 2 township 48 range 14.

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. Jr .....$	17.87	
1858	James Stinson	Pd.....$	25.11	
1859	Not paid	Sold in 62 for taxes of 59–60–61	See note 1 hereto	
1860	Do.	Do.	Do.	
1861	Do.	Do.	Do.	
1862	James Stinson	Paid per E. W. A. Jr ..$	9.10	Feby. 28 1863
1863	James Stinson	Paid Jas Stinson .....$	13.87	July 25 64
1864	James Stinson	Paid pr P. P. W .....$	16.79	July 14 65
1865	Not Paid	Not Sold.		
1866	No name on roll	Pd by D. G. M .....$	18.30	
1867	James Stinson	Paid .....$	20.47	Dec. 30/67
1868	James Stinson	Paid .....$	15.89	Mch. 15 69
1869	James Stinson	Paid .....$	9.05	March 2 70
1870	James Stinson	Paid .....$	17.28	March 2/71
1871	James Stinson	Paid .....$	20.68	Feby 29/72
1872	James Stinson	Paid by M. Macara....$	22.77	Feby 28/73
1873	Not Paid	Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd. by J. B. Culver ...$	13.43	2 24/75
1875	James Stinson	T. R .....$	9.76	1 8/76
1876	Not Paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid by J. Stinson.....$	31.40	Apr. 10 82
1882	James Stinson	Owner.....$	32.82	1 18/83
1883	James Stinson	J. Stinson per J. B ....$	55.31	Jany 5.84
1884	James Stinson	J. Stinson pr J. B .....$	71.48	April 10 1885
1885	James Stinson	Jas. Stinson pr J. B....$	54.81	Feb. 26 1886
1886	James Stinson	Jas. Stinson .....$	55.16	Mch 10 87
1887	James Stinson	Pd by James Stinson ..$	136.49	Jany 17 88
1888	James Stinson	James Stinson.....$	463.99	Mar. 9 89
1889	James Stinson	James Stinson.....$	975.74	5/19 90
1890	James Stinson	James Stinson.....$	972.22	3/12 91
1891	James Stinson	James Stinson ?.....$	1,826.91	Mch. 10 92

323 Northeast quarter section 4 township 48 range 13

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. Jr...$	19.12	
1858	James Stinson	Pd .....$	10.75	
1859	Not Paid	Sold in 62 for taxes of 59–60–61 See note 1 hereto		
1860	Do.	Do.		Do.
1861	Do.	Do.		Do.
1862	James Stinson	Paid E. W. A. Jr...$	7.33	Feb 28 1863
1863	James Stinson	Paid Jas Stinson ....$	11.11	July 25 64
1864	James Stinson	Paid pr P. P. W....$	13.47	July 14 65
1865	Not Paid	Not Sold		
1866	James Stinson	Paid by D. G. M ...$	13.82	
1867	James Stinson	Paid by D. G. M ...$	9.45	Dec. 30 67
1868	James Stinson	Paid M.....$	16.87	Mch. 15 69
1869	James Stinson	Paid .....$	16.87	Mch. 2.70
1870	James Stinson	Paid .....$	12.60	March 2 71
1871	James Stinson	paid M. M.....$	20.61	Feby 29 72
1872	James Stinson	paid by M. Macara..$	17.25	Feby 28 73
1873	Not Paid	Sold in 1874 See note 1 hereto.		
1874		Pd. by J. B. Culver .$	10.72	2 24 75
1875	James Stinson	T. R.....$	9.36	1 8 76
1876	James Stinson	Not Paid Sold in 1877 See note 1 hereto.		
1877		Do. Do. 1878		Do.
1878		Do. Do. 1879		Do.
1879		Do. Do. 1880		Do.
1880		Do. Do. 1881		Do.
1881	James Stinson	Paid .....$	24.62	Apr. 10 82
1882	James Stinson	Owner.....$	21.43	1 18 83
1883	James Stinson	J. Stinson pr J. B ...$	33.64	Jany 5.84
1883	James Stinson	J. Stinson pr J. B ...$	42.23	April 10 1885
1885	James Stinson	J. Stinson pr J. B ...$	43.36	Feb. 26 1886
1886	James Stinson	Pd by James Stinson.$	37.08	Mch. 10 87
1887	James Stinson	Pd by James Stinson.$	162.23	Jany 17.88
1888	James Stinson	Pd by James Stinson.$	145.92	Mar. 9.89
1889	James Stinson	Pd by James Stinson.$	278.88	5 10 90
1890	James Stinson	James Stinson .....$	856.63	3 12 91
1891	James Stinson	James Stinson .....$	964.49	Mch 10 92

324 Northwest quarter section 4 township 48 range 13

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. Jr ...$	19.13	
1858	James Stinson	Pd.....$	10.75	
1859	Not Paid.	Sold in 62 for taxes of 59–60–61	See note 1 hereto	
1860	Do.			Do.
1861	Do.			Do.
1862	James Stinson	Paid per E. W. A. Jr $	7.33	Feby 28 1863
1863	James Stinson	Paid Jas Stinson ....$	11.11	July 25 64
1864	James Stinson	Paid pr P. P. W....$	13.47	July 14 65
1865	Not paid			
1866	No name on Roll	Pd by D. G. M .....$	13.82	
1867	James Stinson	Paid D. G. M .....$	9.45	Dec. 30 67
1868	James Stinson	Paid .....$	16.87	Mch. 15 69
1869	James Stinson	Paid .....$	16.87	Mch. 2.70
1870	James Stinson	paid.....$	12.60	March 2 71
1871	James Stinson	paid M. M .....$	26.01	Feby 29 72
1872	James Stinson	paid by M. Macara ..$	17.25	Feby 28 73
1873	Not Paid	Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd. by J. B. Culver .$	10.72	2 24 75
1875	James Stinson	T. R.....$	9.36	1 8 76
1876	Not Paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid .....$	24.62	Apr. 10 1882
1882	James Stinson	Owner.....$	21.43	1 18 83
1883	James Stinson	J. Stinson pr J. B ...$	33.64	Jany 5 84
1884	James Stinson	J. Stinson pr J. B ...$	44.23	April 10 1885
1885	James Stinson	J. Stinson pr J. B ...$	43.36	Feb. 26 1886
1886	James Stinson	Pd by James Stinson.$	37.08	Mch 10 87
1887	James Stinson	Pd by James Stinson.$	162.23	Jany 17 88
1888	James Stinson	Pd by James Stinson.$	145.92	Mar. 9 89
1889	James Stinson	Pd by James Stinson.$	278.88	5 19 90
1890	James Stinson	James Stinson.....$	941.05	3 12 91
1891	James Stinson	James Stinson.....$	1,032.86	Mch. 10 92

325 Northeast quarter section 5 township 48 range 13

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	E. W. A. jr	$ 19.04	
1858	James Stinson	Paid	$ 10.71	
1859	Not paid	Sold in 62 for 59–60–61 tax	See note 1 hereto	
1860	Do.	Do.		Do.
1861	Do.	Do.		Do.
1862	James Stinson	Paid per E. W. A. jr	$ 7.26	Feb. 28 1863
1863	James Stinson	Paid Jas. Stinson	$ 12.88	July 25 64
1864	James Stinson	Paid pr. P. P. W	$ 15.59	July 14 65
1865	Not paid			
1866	No name on roll	Pd. by D. G. M	$ 13.82	
1867	James Stinson	Paid D. G. M	$ 9.45	Dec. 30 67
1868	James Stinson	Paid	$ 16.87	Mch. 15 69
1869	James Stinson	Paid	$ 16.87	Mch. 2.70
1870	James Stinson	Paid	$ 12.42	March 2 71
1871	James Stinson	Paid (N. ½ sec. 5)	$ 51.72	Feby. 29 72
1872	James Stinson	Paid by M. Macara	$ 17.25	Feby. 28 73
1873	Not paid	Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd. by J. B. Culver	$ 10.72	2 24 75
1875	James Stinson	T. R	$ 9.36	1 8 76
1876	Not paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid	$ 24.52	Apr. 10 82
1882	James Stinson	Owner	$ 31.96	1 18 83
1883	James Stinson	J. Stinson pr J. B	$ 48.60	Jany 5 84
1884	James Stinson	J. Stinson pr J. B	$ 63.89	April 10 1885
1885	James Stinson	Jas. Stinson, pr. J. B	$ 64.97	Feb. 26 1886
1886	James Stinson	Pd by James Stinson	$ 55.70	Mch. 10 87
1887	James Stinson	Pd by James Stinson	$ 228.50	Jany 17 88
1888	James Stinson	James Stinson	$ 293.92	Mar. 9 89
1889	James Stinson	James Stinson	$ 562.12	5 19 90
1890	James Stinson	James Stinson	$ 924.40	3 12 91
1891	James Stinson	James Stinson	$1,255.38	Mch 10 92

326 Northwest quarter section 5 township 48 range 13

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A., jr	$ 18.96	
1858	James Stinson	Pd.....	$ 10.65	
1859	Not paid	Sold in 62 for tax of 59–60–61	See note 1 hereto	
1860	Do.	Do.	Do.	
1861	Do.	Do.	Do.	
1862	James Stinson	Paid per E. W. A., jr..	$ 6.76	Feby 28/63
1863	James Stinson	Paid	$ 12.88	July 25/64
1864	James Stinson	Paid pr P. P. W	$ 15.56	July 14 65
1865	Not paid			
1866	No name on roll	Pd by D. G. M	$ 13.82	
1867	James Stinson	Paid	$ 10.71	Dec. 30 67
1868	James Stinson	Paid	$ 16.87	Mch. 15/69
1869	James Stinson	Paid	$ 16.87	Mch. 2/70
1870	James Stinson	Paid	$ 12.45	Mch. 2/71
1871	Included with N. E. 1/45 for this year.			
1872	James Stinson	Paid by M. Macara.	$ 17.25	Feby 28/73
1873	Not paid	Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd by J. B. Culver....	$ 10.72	2/24/75
1875	James Stinson	T. R.....	$ 9.36	1/8/76
1876	Not paid	Sold in 1877 Nee note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid	$ 24.48	Apr. 10.82
1882	James Stinson	Owner.....	$ 31.82	1/18/83
1883	James Stinson	J. Stinson pr J. B	$ 48.60	Jany 5.84
1884	James Stinson	J. Stinson pr J. B	$ 63.89	Apr. 10 1885
1885	James Stinson	Jas. Stinson, per J. B ..	$ 84.96	Feb. 26, 1886
1886	James Stinson	Pd by Jas. Stinson	$ 72.85	Mch. 10/87
1887	James Stinson	Pd by James Stinson ..	$ 228.50	Jany 17.88
1888	James Stinson	James Stinson	$ 293.92	Mar. 9 89
1889	James Stinson	James Stinson	$ 562.12	5 19 90
1890	James Stinson	James Stinson	$ 917.94	3 12 91
1891	James Stinson	James Stinson	$1,549.93	Mch. 10/92

327 Northeast quarter section 6 township 48 range 13

Year	Name of owner on tax roll	By whom paid	Amount	Date
1857	James Stinson	Paid E. W. A. jr.....$	188.82	
1858	James Stinson	Pd .....$	13.22	
1859	Not paid	Sold in 62 for tax of 59–60–61	See note 1 hereto	
1860	Do.	Do.		Do.
1861	Do.	Do.		Do.
1862	James Stinson	Paid per E. W. A. jr .$	7.20	Feby 28 1863
1863	James Stinson	Paid Jas. Stinson.....$	12.77	July 25 64
1864	James Stinson	Paid pr P. P. W.....$	15.46	July 14 65
1865	Not paid.			
1866	No name on roll	Pd by D. G. M.....$	10.26	
1867	James Stinson	Paid .....$	10.71	Dec. 30 67
1868	James Stinson	Paid .....$	16.55	March 15 69
1869	James Stinson	Paid .....$	16.62	March 2 70
1870	James Stinson	Paid .....$	12.24	Mch. 2 71
1871	James Stinson	Paid M. M.....$	25.50	Feby 29 72
1872	James Stinson	Paid by M. Macara...$	17.25	Feby 28 73
1873	Not paid	Sold in 1874 See note 1 hereto		
1874	James Stinson	Pd by J. B. Culver...$	10.52	2 24 75
1875	James Stinson	T. R.....$	9.24	1 8 76
1876	Not paid	Sold in 1877 See note 1 hereto		
1877	Do.	Do. 1878 Do.		
1878	Do.	Do. 1879 Do.		
1879	Do.	Do. 1880 Do.		
1880	Do.	Do. 1881 Do.		
1881	James Stinson	Paid .....$	28.35	Apr. 10 82
1882	James Stinson	Owner .....$	31.57	1 18 83
1883	James Stinson	J. Stinson pr J. B....$	48.60	Jany 5.84
1884	James Stinson	J. Stinson pr J. B....$	63.89	April 10 1885
1885	James Stinson	Jas Stinson per J. B..$	84.96	Feb. 26 1886
1886	James Stinson	Pd by James Stinson..$	72.85	Mch. 10 87
1887	James Stinson	Pd by James Stinson..$	171.93	Jany 17 1888
1888	James Stinson	James Stinson .....$	387.35	Mar. 9.89
1889	James Stinson	James Stinson .....$	740.76	5 19 90
1890	James Stinson	James Stinson .....$	978.29	3 12 91
1891	James Stinson	James Stinson .....$	1,651.84	Mch. 10 92

328 NOTE 1.—*Attached to statement of taxes.*

Herein is shown tax sales and redemption of lands in this action, wherever the same were sold and redeemed, &c.

No. certificate.	To whom assessed.	Description.	Sec.	Town.	Range.	Amount.	To whom sold.	By whom redeemed.	Amount.	To whom deeded.	Date.	Remarks.
2108		N. W. ¼	26	49	14	115.32	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	See p. 458
2131		N. W. ¼	33	49	14	49.74	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 462
2139		N. W. ¼	35	49	14	117.32	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 464
2140		S. W. ¼	35	49	14	117.32	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 464
2143		Lots 1, 2, 3	1	48	14	31.85	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 466
2146		N. W. ¼	1	48	14	51.82	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 466
2144		Lots 7, 8, 9	1	48	14	36.09	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 466
2145		N. W. ¼ of N. E. ¼	1	48	14	13.20	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 466
2147		N. E. ¼	2	48	14	51.97	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 466
2276		N. E. ¼	4	48	13	66.41	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 490
2278		N. W. ¼	4	48	13	66.40	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 490
2280		N. E. ¼	5	48	13	66.13	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 492
2281		N. W. ¼	5	48	13	65.01	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 492
2284		N. E. ¼	6	48	13	65.30	Assigned Jany. 12 1863 to James Stinson	James Stinson			1864 Sept. 26	" " 492

Sales Book, 1874, p. 784.

No. certificate.	To whom assessed.	Description.	Sec.	Town.	Range.	Amount.	Total.	To whom sold.
(Here follows a description of a large list of lands, including the lands in this suit.) Only the lands in this suit are set out here.								
635	James Stinson	Lot 7	1	48	14	6.25		
"	do	" 8	1	"	"	5.35		
"	do	" 9	1	"	"	4.30		
		North West of						
"	do	North East	1	"	"	6.25		
"	do	Lot 1	1	"	"	4.10		
"	do	Lot 2	1	"	"	9.90		
"	do	Lot 3	1	"	"	8.50		
"	do	North West qr	1	48	14	24.50		
"	do	North East qr	2	"	"	16.55		Douglas County
*		*		*			*	*
"	do	North East qr	4	48	13	13.30		Assigned J. B. Culver
"	do	North West qr	4	48	13	13.30		June 6, 1874
"	do	North East qr	5	48	13	13.30		
"	do	N W ¼	5	48	13	13.30		Taxes of 1875—236.29
"	do	North East qr	6	48	13	13.05		Taxes of 1874—294.41
		Fees				2.50		
							365.92	

This certificate canceled November 24, 1883. See record of proceedings, p. 555.

331 *Sales book 1874, p. 782.*

No. certificate.	To whom assessed.	Description.	Sec.	Town.	Range.	Amount.	Total.	To whom sold.
(Only those lands involved in this suit are set out here. Other lands in the same certificate are omitted.)						Dollars. Cents.		
628	James Stinson.	Northwest qr.	26	49	14	40.40		
	do.	Southwest qr.	28	49	14	20.30		1876— 65.92.
	do.	Northwest qr.	33	49	14	20.35		1875— 93.20.
								1874—128.28.
	do.	Northwest qr.	35	49	14	20.35		Douglas County.
								Assigned J. B. Culver.
	do.	Southwest qr.	35	49	14	20.35		June 6, 1874.
		Fees				.50		
							162.55	Canceled Nov. 24, 1883.

No. certificate	To whom assessed	Description	Sec.	Town	Range	Amount	To whom sold	By whom redeemed	Amount	To whom deeded	Date	Remarks
	Page 205 Town 49, range 14											
37	James Stinson	NW. ¼	26	49	14	17.54	Douglas County			Douglas County	1880 Sept. 2	Sales book, p. 205
37	James Stinson	NW. ¼	33	49	14	6.71	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	NW. ¼	35	49	14	9.14	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	SW. ¼	35	"	"	9.14	Douglas County			Douglas County	1880 Sept. 2	
	Page 207 Town 48, range 14											
37	James Stinson	Lots 1, 2, 3	1	48	14	14.11	Douglas County			Douglas County	1880 Sept. 2	Sales book, p. 207
37	James Stinson	NW. ¼	1	48	14	15.09	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	Lots 7, 8, 9 & NW. of NE.	1	48	14	14.03	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	NE. ¼	2	48	14	10.17	Douglas County			Douglas County	1880 Sept. 2	" " " "
	Page 209 Town 48, range 13											
37	James Stinson	NE. ¼	4	48	13	8.04	Douglas County			Douglas County	1880 Sept. 2	Sales book, p. 209
37	James Stinson	NW. ¼	4	"	"	8.03	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	NE. ¼	5	48	13	8.04	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	NW. ¼	5	48	13	8.00	Douglas County			Douglas County	1880 Sept. 2	" " " "
37	James Stinson	NE. ¼	6	48	13	7.94	Douglas County			Douglas County	1880 Sept. 2	" " " "

333 *Tax sales book for 1878 showing tax sales of land in this action.*

No. certificate	To whom assessed	Description	Sec.	Town	Range	Amount	To whom sold	By whom redeemed	Amount	To whom deeded	Date	Remarks
	Page 302											
413	James Stinson	NW ¼	26	49	14	10.65	Co					Sales Book p 302
	Page 303											
413	James Stinson	SW ¼	28	49	14	11.30	Co					Sales Book p 303
413	James Stinson	NW ¼	33	49	14	9.46	Co					" " " "
413	James Stinson	NW ¼	35	49	14	9.12	Co					" " " "
413	James Stinson	SW ¼	35	49	14	9.12	Co					" " " "
	Page 305											
438	James Stinson	Lots 1, 2, 3	1	48	14	10.73	Co					Sales Book p 305
454	James Stinson	NW ¼	1	"	"	11.37	Co					" " " "
454	James Stinson	Lots 7, 8, 9, & NW ¼ NE ¼	1	"	"	10.67	Co					" " " "
454	James Stinson	NE ¼	2	48	14	11.42	Co					" " " "
	Page 306											
454	James Stinson	NE ¼	4	48	13	19.48	Co					" " " 306
454	James Stinson	NW ¼	4	48	13	19.48	Co					" " " "
462	James Stinson	NE ¼	5	"	"	19.43	Co					" " " "
462	James Stinson	NW ¼	"	"	"	19.35	Co					" " " "
	Page 307											
462	James Stinson	NE ¼	6	48	13	19.35	Co					" " " 307

No. certificate	To whom assessed	Description	Sec.	Town	Range	Amount	To whom sold	By whom redeemed	Amount	To whom deeded	Date	Remarks
	Page 57											
437	James Stinson	Northwest qr	26	49	14	8.22						
		Southwest qr	28	49	14	6.35						
		Northwest qr	35	49	14	6.21						
		Southwest qr	35	49	14	6.21						
		Fees				.25						
						40.29	Douglas County	County				Sales Book, p 57
	Page 59											
471	James Stinson	Lots 8, 9, & N W. of NE. qr	1	48	14	4.60						
		Northwest qr	1	do	do	6.61						
		Northeast qr	2	do	do	6.63						
		Fees				.25						
						21.54	Douglas County	County				" " " 59
	Page 63											
503	James Stinson	Northeast ¼	4	48	13	6.73						
		Northwest ¼	4	48	13	6.73						
		Northeast ¼	5	48	13	6.70						
		Northwest ¼	5	48	13	6.65						
		Northeast ¼	6	48	13	6.60						
		Fees				.25						
						33.66	Douglas County	County				" " " 63

No. certificate	To whom assessed	Description	Sec.	Town	Range	Amount	To whom sold	By whom redeemed	Amount	To whom deeded	Date	Remarks
	Page 138											
403	James Stinson	Northwest ¼	26	49	14	3.465						
		Southwest ¼	28	do	do	17.95						
		Northwest ¼	33	do	do	15.30						
		Fees				.25						
						98.45	Douglas County	County				Sales Book p 138
404	James Stinson	Northwest ¼	35	49	14	14.95						
		Southwest ¼	35	49	14	14.95						
		Fees				.25						
						86.00	Douglas County	County				" " " "
440	James Stinson	Lots 7, 8, 9 & NW. ¼ of NE. ¼	1	48	14	15.75						
		do 1, 2, 3	1	do	do	15.70						
		Northwest qr	1	do	do	16.90						
		Northeast qr	2	do	do	14.05						
		Fees				.25						
						70.85	Douglas County	County				" " " "
	Page 143											
469	James Stinson	Northeast qr	4	48	13	13.05						
		Northwest qr	4	do	do	13.05						
		Northeast qr	5	do	do	13.00						
		Northwest qr	5	do	do	12.95						
		Northeast qr	6	do	do	12.85						
		Fees				.25						
						65.15	Douglas County	County				" " " "

No. certificate	To whom assessed	Description	S. e.	Town	Range	Amount	To whom sold	By whom redeemed.	Amount	To whom deeded	Date	Remarks
	Page 186											
137	James Stinson	Northwest qr	26	49	14	30.72						
		Southwest qr	28	49	14	16.08						
		Northwest qr	33	"	"	12.10						
		Fees				.25						
						82.10	Douglas County	County tax title				Sales book p 186
138	James Stinson	Northwest qr	35	49	14	11.67						
		Southwest qr	35	49	14	11.67						
		Fees				.25						
						62.89	Douglas County	County tax title				" " " "
	Page 188											
166	James Stinson	Lots 7, 8, 9 & NW. ¼ of NE. ¼	1	48	14	11.40						
		do 1, 2, 3	1	48	14	11.60						
		Northwest qr	1	48	14	12.25						
		Northeast qr	2	48	14	12.30						
		Fees				.25						
						54.08	Douglas County	County tax title				" " " 188
	Page 190											
192	James Stinson	Northeast ¼	4	48	13	12.60						
		Northwest ¼	4	"	"	12.60						
		Northeast ¼	5	"	"	12.55						
		Northwest ¼	5	"	"	12.55						
		Northeast ¼	6	"	"	12.45						
		Fees				.25						
						69.45	Douglas County	County tax title				" " " 190

STATE OF WISCONSIN, *Douglas County, ss:*

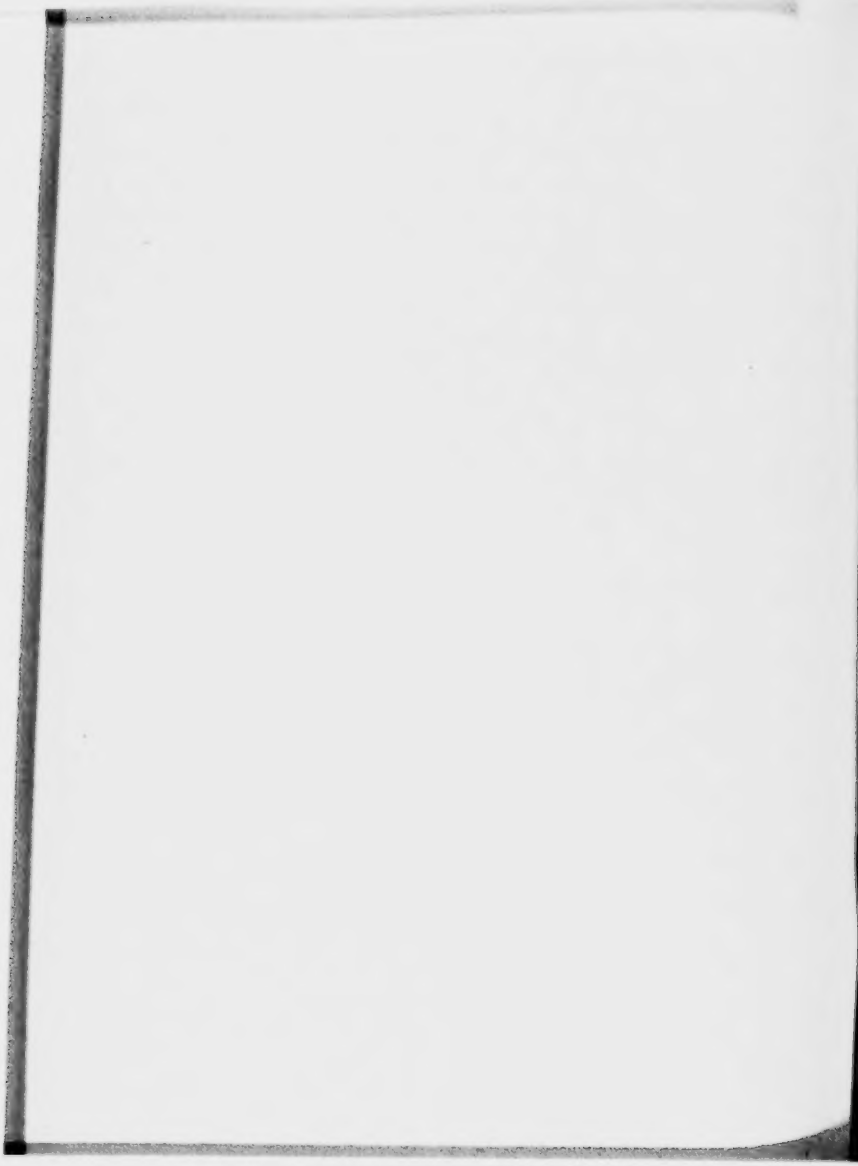
Michael S. Bright, being first duly sworn, upon oath, says that the foregoing is a full, true, correct, and complete statement of the taxes paid or redeemed upon the lands in this suit, and that the same was taken by him from the records and files in the office of the county clerk for Douglas County, Wisconsin.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, 1899.

GEO. R. HUGHES,
Notary Public, Douglas Co,, Wis.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED



342-343 STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath, says that the foregoing is a full, true, correct, and complete statement of the unpaid taxes upon the lands in this action, as shown by the records and files in the office of the county clerk for Douglas County, and that said statement was made from said records and files.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, 1899.

GEO. R. HUGHES,
Notary Public, Douglas Co., Wis.

DEFENDANTS' EXHIBIT A4.—*Tax deed from State of Wisconsin to Douglas County.—Geo. R. Hughes, notary public.*

B No. 10649, State of Wisconsin and Douglas County to Douglas County.

Tax deed filed for record, 2nd September, 1880, at 2 o'clock p. m. Recorded, 3 Tax Deeds, page 76.

To all to whom these presents shall come, greeting:

Whereas, Douglas County has deposited in the office of the county clerk of the county of Douglas, in the State of Wisconsin, certain certificates of the treasurer of said county whereby it appears, as the fact is, that the following-described pieces or parcels of land lying and being situate in the county of Douglas, State of Wisconsin, to wit:

(Here are set forth all of the properties described in Exhibit "A6," and particularly the following:

	No. certificate.	Lands; description.	Sec.	Town.	Range.	Lot Block Acres.	Amt.
	37	North West quarter	26	49	14	160	17.59
	"	South West quarter	28	49	14	160	8.94
	"	North West quarter	33	49	14	160	6.76
	"	North West quarter	35	49	14	160	9.19
	"	South West quarter	35	49	14	160	9.19
	*	* *		*		*	
344	37	Lots 7,8 & 9 & N. W. ¼ of N. E. ¼	1	48	14	140.32	14.23
	"	Lots 1, 2, 3 in	1	48	14	145.58	14.26
	"	North West quarter	12	48	14	161.61	15.74
	"	North East quarter	2	48	14	162.22	10.22
	"	North East quarter	4	48	13	173.59	8.09
	"	North West quarter	4	48	13	173.57	8.08
	"	North East quarter	5	48	13	172.88	8.09
	"	North West quarter	5	48	13	172	8.05
	"	North East quarter	6	48	13	170.75	7.99
	*	* *		*		*	

were for the nonpayment of taxes separately sold by the treasurer of said county, at public auction, at his office in the town of Superior, in the county of Douglas, on the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, to the said Douglas

County for the sum of six hundred thirty-one dollars and eighty-four cents ($631.84/100), in the whole, which sum was the amount of taxes assessed and due and unpaid on said lots, blocks, and tracts of land, together with the costs and charges of such sale due therewith, at time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser.

And whereas, it further appears, as the fact is, that the owners or claimants of said lands have not redeemed from said sale the lands which were sold, as aforesaid; and said lands are now unredeemed from such sale, whereby said described lands have been become forfeited, and the said purchaser or assigns is entitled to a deed of conveyance thereof.

Now, therefore, know all men by these presents, that the county of Douglas, in said State, and the State of Wisconsin, in consideration of said money aforesaid and the premises, and in conformity to law, hath and hereby doth give, grant, and convey the lots, blocks, and tracts of land above described, together with the hereditaments and appurtenances, to the said Douglas County and to its assigns to their sole use and benefit forever.

In testimony whereof, I, George F. Holcomb, the county clerk of the county of Douglas, State of Wisconsin, have executed this deed pursuant to, and in virtue of the authority in me vested by the statutes of the State of Wisconsin, and for and on behalf of the said State, and of the county of Douglas, aforesaid, and have hereunto subscribed my name officially, and affixed the seal of the board of supervisors at
345 Superior, in the said county of Douglas, this second day of September, in the year of our Lord one thousand eight hundred and eighty.

[COUNTY SEAL.] GEORGE F. HOLCOMB, [SEAL.]
County Clerk of the County of Douglas, State of Wisconsin.

Done in presence of—
D. GEO. MORRISON.
JAMES S. RITCHIE.

STATE OF WISCONSIN, *County of Douglas, ss:*

Be it remembered that on the second day of September, A. D. 1880, before the undersigned, a notary public in and for said county, personally appeared George F. Holcomb, clerk aforesaid, and acknowledged that he had executed the above-described deed as county clerk of the county of Douglas, State of Wisconsin, for and on behalf of said county and State for the purpose therein mentioned.

[NOTARIAL SEAL.] D. GEO. MORRISON,
Notary Public, Douglas County, Wisconsin.

STATE OF WISCONSIN, *Douglas County ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a true copy of a certain tax deed from the State of Wisconsin and Douglas County to Douglas County, and recorded in the office of the register of deeds for said county in volume * of Tax Deeds, at page 76, on September 2, 1880, in so far as the said tax deed describes and applies to the lands in this action, as provided by the stipulation herein.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29 day of August, A. D. 1899.

GEO. R. HUGHES,
Notary Public, Douglas County, Wisconsin.

346 DEFENDANTS' EXHIBIT A6.—*Quitclaim deed, County of Douglas to James Stinson.—Geo. R. Hughes, notary.*

The county of Douglas in the State of Wisconsin, grantor, hereby quitclaims to James Stinson, grantee, of Chicago, in the State of Illinois, for the sum of nineteen hundred seventy-eight 57/100 dollars the following lots, blocks, and tracts of land in said county of Douglas, to wit:

Lots six (6), fifty-two (52), eighty-one (81), ninety (90), one hundred fifteen (115), one hundred thirty (130), one hundred thirty-two (132), one hundred forty-six (146), one hundred forty-eight (148), one hundred fifty-one (151), two hundred forty-four (244), two hundred forty-eight (248), two hundred sixty (260), two hundred sixty-two (262), two hundred sixty-three (263), two hundred seventy-two (272), two hundred seventy-four (274), two hundred ninety-seven (297), three hundred eleven (311), three hundred seventeen (317), three hundred nineteen (319), three hundred forty-three (343), three hundred sixty-three (363), three hundred sixty-five (365), three hundred seventy-eight (378), three hundred eighty-five (385), three hundred eighty-seven (387), three hundred ninety-four (394), and four hundred sixty (460) on West First street.

Lots seventeen (17), nineteen (19), twenty-nine (29), sixty-one (61), sixty-three (63), one hundred seventeen (117), one hundred nineteen (119), one hundred sixty-one (161), one hundred seventy (170), one hundred seventy-two (172), two hundred twenty-one (221), two hundred twenty-three (223), two hundred forty-one (241), two hundred forty-three (243), three hundred thirty-nine (339), three hundred seventy-seven (377), three hundred seventy-eight (378), four hundred thirty-five (435), four hundred thirty-seven (437), four hundred three (403), four hundred five (405), four hundred eighty-five (485), four hundred ninety-nine (499), and five hundred three (503), and one hundred ninety-five (195) on West Second street.

Lots nine (9), eleven (11), thirteen (13), sixty-five (65), one hundred sixty-seven (167), one hundred sixty-nine (169), two hundred nine (209), two hundred sixty-five (265), two hundred sixty-seven (267), two hundred sixty-nine (269), two hundred ninety-eight (298), four hundred three (403), four hundred five (405), four hundred seven (407), four hundred thirty-six (436), four hundred sixty-three (463), four hundred sixty-seven (467), sixty-seven (67), one hundred sixty-five (165), two hundred seventeen (217), and four hundred eighty-three (483), fractional, on West Third street.

347 Lots fifty-four (54), one hundred forty-three (143), two hundred seventeen (217), two hundred nineteen (219), two hundred twenty-one (221), two hundred twenty-five (225), two hundred twenty-seven (227), two hundred twenty-nine (229), two hundred thirty-one (231), two hundred thirty-three (233), two hundred ninety-seven (297), three hundred seventy-three (373), three hundred seventy-four (374), three hundred seventy-five (375), three hundred seventy-six (376), four hundred nine (409), four hundred eleven (411), four hundred thirteen (413),

four hundred fifteen (415), four hundred seventeen (417), four hundred thirty-nine (439), four hundred forty-three (443), four hundred forty-four (444), and four hundred forty-eight (448), fractional, on West Fourth street.

Lots nine (9), eleven (11), thirteen (13), sixteen (16), forty-two (42), forty-three (43), forty-five (45), forty-seven (47), one hundred thirty-nine (139), one hundred forty-one (141), one hundred forty-three (143), one hundred forty-five (145), two hundred eighty-two (282), four hundred fourteen (414), two hundred eighty-four (284), two hundred eighty-six (286), two hundred eighty-eight (288), two hundred ninety-two (292), three hundred thirty-eight (338), three hundred sixty-eight (368), three hundred eighty-seven (387), four hundred five (405), four hundred seven (407) on West Fifth street.

Lots ninety-one (91), ninety-three (93), ninety-four (94), ninety-five (95), ninety-seven (97), one hundred twenty-one (121), two hundred thirty-six (236), two hundred thirty-eight (238), two hundred forty (240), two hundred forty-one (241), two hundred forty-four (244), three hundred sixty-two (362), three hundred seventy-three (373), three hundred seventy-seven (377), three hundred eighty-three (383), and four hundred eleven (411), fractional, on West Sixth street.

Lots one hundred twenty-three (123), one hundred twenty-five (125), one hundred twenty-seven (127), one hundred thirty-two (132), one hundred thirty-four (134), one hundred thirty-six (136), one hundred forty-seven (147), one hundred forty-nine (149), one hundred fifty-one (151), one hundred fifty-four (154), one hundred fifty-six (156), one hundred sixty-eight (168), three hundred fifty-three (353), three hundred fifty-five (355), three hundred sixty-two (362), and three hundred seventy-two (372), fractional, on West Seventh street.

Lots sixty-five (65), sixty-eight (68), seventy (70), seventy-two (72), seventy-three (73), seventy-five (75), ninety-five (95), three hundred one (301), three hundred three (303), three hundred five (305), three hundred eight (308), three hundred ten (310), three hundred twelve (312), three hundred twenty-seven (327), three hundred twenty-nine (329), three hundred thirty-six (336), three hundred forty (340), three hundred fifty-four (354), three hundred fifty-six (356), and three hundred sixty-four (364) on West Eighth street.

348 Lots sixty-eight (68), seventy-one (71), seventy-three (73), seventy-six (76), seventy-eight (78), eighty (80), one hundred fifty-three (153), one hundred fifty-five (155), one hundred fifty-seven (157), one hundred fifty-nine (159), one hundred sixty-two (162), one hundred sixty-four (164), two hundred seventy-six (276), two hundred seventy-eight (278), two hundred ninety-one (291), three hundred (300), three hundred eighteen (318), three hundred twenty (320), three hundred twenty-seven (327), three hundred forty-five (345), three hundred forty-seven (347), three hundred fifty-four (354), three hundred seventy-two (372), three hundred seventy-four (374), three hundred eighty-one (381), three hundred ninety-nine (399), fractional, on West Ninth street.

Lots eighty-one (81), eighty-three (83), eighty-five (85), eighty-seven (87), eighty-nine (89), one hundred fifty-one (151), one hundred fifty-three (153), one hundred fifty-five (155), one hundred fifty-seven (157), one hundred fifty-nine (159), two hundred eighty-nine (289), two

hundred ninety-three (293), three hundred nine (309), three hundred eleven (311), three hundred eighty-one (381), three hundred eighty-three (383), three hundred eighty-nine (389), and three hundred ninety-one (391) on West Tenth street.

Blocks three (3), ten (10), twelve (12), nineteen (19), and southwest quarter of twenty-three (23) on West Eleventh street.

Blocks sixteen (16), fractional, and seventeen, fractional, on West Twelfth street.

Blocks six (6) and thirty-three (33) on West Thirteenth street.

Blocks eight (8), seventeen (17), northeast quarter two (2), and southeast quarter twenty-one (21), West Seventeenth street.

Blocks nine (9), twenty-seven (27), thirty-six (36), fractional, and thirty-eight (38), fractional, on West Nineteenth street.

Blocks six (6) and thirty-three (33) on West Twenty-first street.

Blocks thirteen (13), northeast quarter eleven (11), and west half twenty-seven (27) on West Twenty-third street.

Blocks eighteen (18) and twenty-seven (27) on West Twenty-fifth street.

Blocks eight (8) and seventeen (17), West Twenty seventh street.

Block thirty-two (32) on West Twenty-ninth street.

Blocks ten (10), fractional, and twenty-one (21) on West Thirty-first street.

Blocks twenty-nine (29) and thirty-eight (38) on West Thirty-third street.

Block twenty-four (24) on West Thirty-fifty street.

Block thirty-four (34) on West Thirty-seventh street.

Block thirty-nine (39), fractional, on West Thirty-ninth street.

349 Blocks ten (10) and nineteen (19), fractional, on West Forty-first street.

Block sixteen (16), fractional on West Forty-fourth street.

Lots three hundred sixty-one (361), three hundred seventy-seven (377), three hundred eighty-nine (389), four hundred thirteen (413), four hundred fifteen (415), four hundred twenty-seven (427), and four hundred twenty-nine (429) on West Bay street.

Lots eight (8), twelve (12), thirteen (13) on River street.

Lots of twelve (12) and thirteen (13) on Toledo Pier.

Lots sixteen (16) and eighteen (18) on Montreal Pier.

Lots nineteen (19), twenty-one (21), and twenty-three (23) on Monroe Pier.

Lots eight (8) and ten (10) on Hamilton Pier.

Lots three (3), five (5), and seven (7) on Dunkirk Pier.

Diagram lots sixty-two (62), sixty-three (63), sixty-five (65), eighty-six (86), one hundred twelve (112), one hundred sixteen (116), east half one hundred nineteen (119), one hundred twenty (120), one hundred fifty-nine (159), one hundred eighty-seven (187), one hundred ninety-four (194), one hundred ninety-five (195).

Blocks six (6) and fifty-one on East First street.

Lots seventy-one (71), seventy-three (73), seventy-five (75), two hundred thirteen (213), two hundred fifteen (215), two hundred forty-two (242), two hundred forty-four (244), two hundred forty-six (246), two hundred forty-eight (248), four hundred twenty-five (425), four hundred

thirty (430), four hundred thirty-two (432), five hundred thirty-two (532), five hundred thirty-four (534), and five hundred seventy-four (574) on East Second street.

Blocks twenty-eight (28), fifty-six (56), fifty-seven (57), and fifty-nine (59) on East Third street.

Blocks fifty-two (52) and sixty (60) on East Fourth street.

Blocks twenty (20), twenty-three (23), forty-seven (47), fifty-three (53), fifty-five (55), and north half of two (2) on East Fifth street.

Blocks forty-four (44) and fifty-one (51) on East Sixth street.

Blocks twenty-one (21) and twenty-three (23) on East Seventh street.

Blocks thirty-eight (38), forty (40), and fractional fifty-nine (59) on East Eighth street.

North half of block four (4) on East Ninth street.

Blocks thirty-three (33), forty-five (45), forty-seven (47), forty-nine (49), and fifty-one (51) on East Tenth street.

Blocks fifty (50) and fifty-two (52) on East Eleventh street.

Block forty-three (43) on East Twelfth street.

Blocks twenty-five (25), forty-two (42), and forty-four (44) on East Thirteenth street.

350 Blocks twenty-six (26), twenty-eight (28) on East Fourteenth street.

Blocks twenty-one and twenty-three (23) on East Seventeenth street.

Blocks twenty-two (22) and twenty-four (24) on East Eighteenth street.

Blocks six (6) on East Nineteenth street.

Blocks twenty-nine (29) and thirty-one (31), fractional, on East Twentieth street.

Fractional block thirty (30) on East Twenty-first street.

Block three (3) and fractional block twenty-six (26) on East Twenty-third street.

Block seventeen (17), East Twenty-fifth street.

Blocks eleven (11), fractional, twelve (12), fractional, and thirteen (13), fractional, on East Twenty-seventh street.

Blocks ten (10), fifty-five (55), fractional, sixty-two (62), and sixty-four (64) on East Itasca street.

Blocks sixty-one (61) and sixty-three (63) on East St. Croix street.

Blocks forty-six (46) and forty-eight (48) on East Bay street.

Blocks north half ten (10), forty-five (45), seventy (70), and seventy-two (72) on East Michigan street.

Blocks sixty-nine (69), seventy-one (71), and seventy-eight (78) on East Huron street.

Blocks sixty-two (62), sixty-three (63), eighty (80), and eighty-eight (88), East St. Clair street.

Block seventy-nine (79) on East Erie street.

Blocks fifty (50), eighty (80), eighty-two (82), and eighty-four (84) on Champlain street.

Blocks seventy-seven (77), seventy-eight (78), eighty (80), eighty-one (81) on St. George street.

Blocks seventy-seven (77), seventy-nine (79), and eighty-six (86), Cayuga street.

Blocks eighty-two (82), eighty-five (85), eighty-six (86), eighty-eight

(88), one hundred five (105), fractional, and one hundred six (106), fractional, on Seneca street.

Blocks sixty-three (63), eighty-one (81), eighty-five (85), eighty-seven (87), ninety (90), fractional, ninety-two (92), and one hundred seven (107), fractional, on Winnebago street.

Blocks seventy-six (76), eighty-two (82), and eighty-four (84) on Baltic street.

Blocks seventy-three (73), seventy-five (75), ninety-four (94), and ninety-six (96) on Caspian street.

Block ninety-three (93) on Azof street.

Blocks eighty-seven (87), one hundred (100) on Pepin street.

351 Blocks ninety-seven (97) and eighty-eight fractional on Bodes street.

Blocks one hundred six (106), one hundred eight (108) on Amazon street.

Block one hundred seven (107) on Geneva street.

Block one hundred ten (110) on Pontchartrain street.

Blocks one hundred seventeen (117) and one hundred eighteen (118) on Peninsula avenue.

North quarter of block ten (10) on St. Paul street.

Blocks north half of fourteen (14), thirty (30), and ten (10) fractional on Water street.

Block five (5) *an* East Twenty-first street.

All in the town of Superior as said town was surveyed and platted, and the plat thereof recorded in the office of the register of deeds in and for said county. Also lots undivided half one (1), undivided half two (2), undivided half three (3) fractional, undivided half four (4), undivided half five (5), undivided half seven (7), undivided half eight (8), undivided half nine (9), undivided half ten (10), undivided half eleven (11), undivided half twelve (12), all in block eight (8) in Middletown in the town of Superior, as said Middletown was surveyed and platted and the plat thereof recorded in the office of the register of deeds in and for said county.

Also the undivided half of block thirty-three (33) fractional in Superior City in the town of Superior as said Superior City was surveyed and platted and the plat thereof recorded in the office of the register of deeds in and for said county of Douglas.

Also the following described lands, to wit:

Northwest quarter section fifteen (15) one hundred fifty-nine 70 100 acres (159 70 100), undivided forty *acres* (40) acres in section sixteen (16), northwest quarter section twenty-six (26), one hundred sixty (160) acres, southwest quarter section twenty-eight (28), one hundred sixty (160) acres, northwest quarter section thirty-three (33), one hundred sixty (160) acres, northwest quarter section thirty-three (33), one hundred sixty (160) acres, northwest quarter section thirty-five (35), one hundred sixty (160) acres, southwest quarter section thirty-five (35), one hundred sixty (160) acres, undivided one hundr'd forty (140) acres in southwest quarter section thirty-six (36), undivided thirteen sixteenths in lots one (1), two (2), three (3), and northwest of southeast quarter of section thirty-six (36), one hundred twenty-six 50 100 (126 50 100) acres, all in township forty-nine (49) north of range fourteen (14) west.

Lots three (3) and four (4) in section thirty-one (31) ninety-nine 40 100 (99 40 100) acres, lots one (1), two (2), three (3), and four (4) in section thirty-two (32), two hundred four 40 100 (204 40/100) acres, lots one
352 (1), two (2), and three (3), in section thirty-three (33) one hundred six 46/100 (106 46/100) acres, lots one (1) and two (2), section thirty-four (34), seventy-four 80 100 (74 80 100) acres, lots one (1), two (2), three (3), and four (4), section thirty-five (35), one hundred fourteen 79/100 (114 79 100) acres, lots one (1) and two (2), section thirty-six (36) sixty-eight 30 100 (68 30 100) acres, all in township forty-nine 49) north, range twelve (12) west.

Lots one (1), two (2), three (3), section twenty-one (21), one hundred twenty-three 78 100 (123 78 100) acres. Lot one (1), section twenty-eight (28), thirty-three 50 100 (33 50 100) acres, lots one (1), two (2), three (3), and four (4) in section twenty-nine (29). one hundred eighty-two 08 100 (182 08 100) acres, lots one (1), two (2), and three (3), section thirty (30), one hundred thirty-five 30 100 (135 30 100) acres, all in township forty-nine (49) north, range eleven (11) west.

Lots one (1), two (2), three (3), section one (1) one hundred forty-five 58 100 (145 58 100) acres, lots seven (7), eight (8), nine (9), and northwest of northeast quarter section one (1), one hundred forty-two 78 100 (142 78 100) acres, northwest quarter section one (1), one hundred sixty-one 61 100 (161 61 100) acres, northeast quarter section two (2), one hundred sixty-two 22 100 (162 62 100) acres, and undivided three quarters of undivided two-thirds of northwest quarter section four (4), eighty-one 62 100 (81 62 100) acres, all in township forty-eight (48), north of range fourteen (14) west.

North half section four (4), three hundred forty-seven 16 100 (347 16 100) acres, north half section five (5), three hundred forty-four 88 100 (344 88 100) acres, northeast quarter section six (6), one hundred seventy (170) acres, east half of southwest quarter and south half of southwest quarter section fifteen (15), one hundred (100) acres, all in township forty-eight (48) north of range thirteen (13) west; also east half of northeast quarter and east half of west half of northeast quarter section sixteen (16), one hundred twenty (120) acres in township forty-eight (48), north of range thirteen (13) west.

East half section thirty-six (36), three hundred twenty (320) acres, northwest of northwest quarter, east half of northwest quarter and east half of southwest quarter section thirty-six (36), two hundred (200) acres, all in township forty-eight (48), north of range eleven (11) west.

North half section thirty (30), three hundred sixteen 97/100 (316 97 100) acres, south half of section thirty-two (32), three hundred twenty (320) acres, all in township forty-eight (48), north of range ten (10) west.

353 North half section six (6), three hundred fourteen 66 100 (314 66 100) acres; southeast quarter and east half of southwest quarter, section eight (8), two hundred forty (240) acres; northeast quarter, east half of northwest quarter, southwest of northwest quarter, southeast quarter and southwest quarter, section eighteen (18), six hundred (600) acres; all in township forty-seven (47) north, range fourteen (14) west. Also west half of southwest quarter and southeast of southwest quarter, section twenty (20), one hundred twenty (120) acres; west half of north-

east quarter, southeast of northeast quarter, and west half of southwest quarter, section thirty (30), one hundred ninety-nine 25 100 (199 25 10) acres; all in township forty-seven (47) north, range fourteen (14) west.

Northeast quarter, east half of northwest quarter, and southwest of northwest quarter, section two (2), two hundred eighty 85/100 (280 85 100) acres; northwest quarter, northeast quarter, and northeast quarter of southeast quarter, section ten (10), three hundred sixty (360) acres; all in township forty-seven (47) north, range eleven (11) west.

In testimony whereof, I, George F. Holcomb, the county clerk of the county of Douglas, State of Wisconsin, have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Wisconsin, and by the order of the board of supervisors of said county, of record in my office, and for and on behalf of the said county of Douglas aforesaid, and have hereunto subscribed my name officially and affixed the seal of the said board of supervisors and my seal at Superior, in said county of Douglas, this 20th day of June, in the year of our Lord One thousand eight hundred and eighty-one.

[SEAL OF BOARD OF SUPERVISORS.]

GEORGE F. HOLCOMB, [SEAL.]
County Clerk of the County of Douglas, State of Wisconsin.

Done in presence of
JAMES S. RITCHIE.
HIRAM HAYES.

354 STATE OF WISCONSIN, *County of Douglas, ss:*

Be it remembered that on the 20th day of June, A. D. 1881, before the undersigned, a notary public in and for said county, personally appeared George F. Holcomb, clerk aforesaid, and acknowledged that he had executed the above deed as county clerk of the county of Douglas, State of Wisconsin, for and on behalf of said county for the purposes therein mentioned.

[NOTARIAL SEAL.] D. GEO. MORRISON,
Notary Public, Douglas County, Wisconsin.

STATE OF WISCONSIN, *County of Douglas, ss:*

Personally came before me this 28th day of October, A. D. 1884, the above and within named George F. Holcomb, county clerk of the county of Douglas, in the State of Wisconsin, to me known to be the person who executed the foregoing and within instrument, and acknowledged the same.

[NOTARIAL SEAL.] D. GEO. MORRISON,
Notary Public, Douglas County, Wisconsin.

(Endorsed:) A No. 80876. Quitclaim deed. Douglas County, to James Stinson. June 20th, '81. Office of register of deeds, Douglas County, Wis. I hereby certify that the within instrument was filed in the office for record on the 29th day of June, A. D. 1881, at 10 o'clk a. m., and was duly recorded in book 3 of tax deeds, pages 88, 89, 90, 91, 92, & 93. D. Geo. Morrison, register of deeds. $6.00. (L. S.)

No. 14,992. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 28th day of October, A. D. 1884, at 2 o'clock p. m., and was duly recorded in book "3" of tax deeds, pages 270, 271, 272, 273, 274, 275, & 276. D. Geo. Morrison, register of deeds. (L. S.)

355 EXHIBIT A7.—*Deed from James Stinson to G. L. Brooks.—Geo. R. Hughes, notary public.*

A. No. 11691.

James Stinson
to
George L. Brooks.

Deed Record Vol. "O," p. 200.
Douglas County, Wisconsin.
Warranty deed.
Filed for record June seventh, A. D. 1882, at 11 o'clock a. m.

This indenture, made the nineteenth day of May, in the year of our Lord, one thousand eight hundred and eighty-two, between James Stinson (unmarried), of Chicago, Illinois, party of the first part, and George L. Brooks, of Superior, Wisconsin, party of the second part.

Witnesseth, That the said parties of the first part for and in consideration of the sum of one thousand dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all that tract, piece, or parcel of land lying and being in the county of Douglas and State of Wisconsin, described as follows, to wit:

Twenty (20) acres of land in section one (1) in township forty-eight (48) north, of range fourteen (14) west, bounded and described as follows, to wit: Commencing at the center or center post of said section one (1) and running thence west three hundred and thirty (330) feet, thence north nine hundred and thirty (930) feet, thence east six hundred and sixty (660) feet, thence south four hundred and thirty (430) feet, thence east five hundred and fifty (550) feet, thence south two hundred (200) feet more or less to the Nemadji River, thence up and along said river to the south line of lot seven (7) in said section one (1), thence west along said line four hundred and thirty (430) feet more or less to the place of beginning, containing twenty (20) acres in accordance with Government surveys, reserving thirty-three (33) feet thereof inside and around the boundary lines except that bounded by the river for the streets, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in, and to the above-bargained premises and their hereditaments and appurtenances.

356 To have and to hold the said premises, as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said James Stinson for himself, and for his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with

the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES STINSON. [SEAL.]

Sealed and delivered in presence of—
QUINTIN JOHNSON.
EDWIN STEWART.

STATE OF ILLINOIS, *County of Cook, ss:*

Be it remembered, that on the 19th day of May, 1882, personally came before me the above-named James Stinson, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[NOTARIAL SEAL.] EDWIN STEWART,
Notary Public, Cook County, Illinois.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, and complete copy and transcript of deed record, Vol. "O," at page 200, in the office of the register of deeds for Douglas County, Wisconsin, and that the said volume and page contains the record of a certain deed from James Stinson to George L. Brooks, of which the foregoing is a true copy.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, 1899.
GEO. R. HUGHES,
Notary Public, Douglas County, Wisconsin.

357 DEFENDANT'S EXHIBIT A8.—*Deed from James Stinson to Northern Pacific Railroad Co.—Geo. R. Hughes, notary public.*

Deed record Vol. "Q" Douglas County, Wis., page 13.
C No. 11164.

James Stinson to Northern Pacific Railroad Company.	Quitclaim deed. Filed for record December 20th, 1881, at 10 1/2 a. m.

This indenture, made this tenth day of August, 1881, between James Stinson, of the city of Chicago, county of Cook, State of Illinois, party of first part, and The Northern Pacific Railroad Company, party of the second part, witnesseth: The said party of the first part, for and in consideration of one dollar to him paid by the party of the second part, the receipt whereof is hereby acknowledged, do quitclaim, release, and convey to the said party of the second part, its successors and assigns, the

right of way for the railway of the party of the second part over and upon the following-described parcel of land situate in the county of Douglas and State of Wisconsin, to wit: A strip of land one hundred feet in width, being fifty feet on each side of the center line of the railroad of said party of the second part, as the same is or may be laid off, surveyed, and constructed through and upon the following-described premises: The northeast quarter of section two (2), in township forty-eight (48) north of range fourteen (14) west, also the northwest quarter of the southwest quarter of section thirty-six (36) in township forty-nine (49) north, of range fourteen (14) west. To have and to hold the same unto the said party of the second part, its successors and assigns, to be used for the construction and operation of a railway and for no other purpose whatever. In testimony whereof the said party of the first part hath thereunto set his hand and seal the day and year aforesaid.

JAMES STINSON. [SEAL.]

Signed, sealed, and delivered in presence of—
EDWIN STEWART.
QUIN JOHNSON.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Edwin Stewart, a notary public in and for said county in the State aforesaid, do hereby certify that James Stinson, personally known to me to be the same person whose name is subscribed to the foregoing
358 instrument, appeared before me this day in person and acknowledged that he had executed the same as his free and voluntary act for the uses and purposes therein set forth. Given under my hand and notarial seal this tenth day of August, A. D. 187.

[NOTARIAL SEAL.] EDWIN STEWART,
Notary Public.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, correct, and complete copy and transcript of the record of a certain deed from James Stinson to the Northern Pacific Railroad Company, and which is recorded in deed record Vol. "Q," page 13, Douglas County, Wisconsin, on December 20th, 1881.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, A. D. 1889.

GEO. R. HUGHES,
Notary Public, Douglas County, Wis.

DEFENDANTS' EXHIBIT A9.—*Deed from James Stinson to C., St. P., M. & O. Ry. Co.—Geo. R. Hughes, notary public.*

Deed record Vol. "P," page 564, Douglas County, Wisconsin. No. 11089. James Stinson to the Chicago, St. Paul, Minneapolis and Omaha Railway Company. Deed filed for record November 16, 1881, at 10 a. m.

This indenture made this third day of October, A. D. 1881, between James Stinson, of the city of Chicago, county of Cook and State of Illinois, party of the first part, and the Chicago, St. Paul, Minneapolis and Omaha Railway Company, party of the second part, witnesseth: The said party

of the first part for and in consideration of one ($1.00) dollar to him paid by the party of the second part, hath granted, bargained, and sold, and by these presents doth bargain and sell to the said party of the second part the right of way for the railway of the party of the second part over and across the following-described parcel of land situated in the county of Douglas and State of Wisconsin, to wit: A strip or piece of land one hundred (100) feet in width, being a part of and extending through the lands of the first party hereinafter described and included between parallel lines with one on each side of and each distant fifty (50) feet from the center line of the railway of said railway company as the same is
359 now surveyed, staked out, and located, and being constructed.

The lands of the said party of the first part above referred to, which the right of way over the said strip one hundred (100) feet wide runs, are described as follows:

The south half (½) of the southwest quarter (¼) of the southwest quarter (¼) of section fifteen (15), in township forty-eight (48), north of range thirteen (13) west; the east half (½) of the northeast quarter (¼) of section sixteen (16) in township forty-eight (48), of range thirteen (13) aforesaid; and the east half (½) of the northwest (¼) and the northwest quarter (¼) and the northwest quarter (¼) of the northwest quarter (¼) of section four (4), in township forty-eight (48), of range thirteen, aforesaid.

To have and to hold the said right of way unto the said party of the second part, its successors and assigns, to be used in the construction and operation of a railway, and for no other purpose whatever.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] JAMES STINSON.

Signed, sealed, and delivered in presence of

HENRY M. RICE.
WM. A. RICHTER.

STATE OF MINNESOTA, *County of Ramsey*, ss:

Personally came before me this 2nd day of November, 1881, the above-named Stinson, to me known to be the person who executed the foregoing instrument and acknowledged the same. Witness my hand notarial seal this 2nd day of November, 1881.

WM. A. RICHTER,
Notary Public, Ramsey Co., Minn.

STATE OF WISCONSIN, *Douglas County*, ss:

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, correct, and complete copy and transcript of the record of a certain deed from James Stinson to The Chicago, St. Paul, Minneapolis and Omaha Railway Company, and which was recorded in the office of the register of deeds for Douglas County, Wisconsin, in volume "P" of deeds, at page 564, on November 16th, 1881.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29 day of August, A. D. 1899.

GEO. R. HUGHES,
Notary Public, Douglas County, Wisconsin.

360 DEFENDANTS' EXHIBIT A 10—*Report of commissioner—Geo. R. Hughes, notary public.*

STATE OF WISCONSIN, *County of Douglas, ss:*

In circuit court.

In the matter of the petition of the Duluth, South Shore and Atlantic Railway Company for the appointment of commissioners of appraisal to ascertain, appraise, and determine the compensation to be made to the owners of and persons interested in certain real estate required to be taken by said company in the said county of Douglas for the construction of a portion of its main line of railway in said county.

To the honorable the circuit court for Douglas County, in the State of Wisconsin:

The undersigned, A. C. Brown, John C. Beterand, and O. A. Britton, having been appointed on the 10th day of December, 1888, by an order duly entered and made in said matter by Hon. S. H. Clough, judge of said circuit court, commissioners to ascertain and appraise the compensation to be made by the owners and persons interested in the real estate, lands, and premises required and adjudged necessary to be taken by said railway company for the purposes indicated in the petition in the matter aforesaid, filed in this court on the 19th day of November, 1888, being disinterested and competent free holders residing in said county of Douglas, and having been duly qualified and authorized in the premises, respectfully report that on the 13th day of December, 1888, we, and each of us, did take and subscribe the oath required by law, which was filed in this court on the 19th day of December, 1888, and that on the said 13th day of December, 1888, we were duly requested in writing by the said Duluth, South Shore and Atlantic Railway Company to proceed with the performance of our duties as such commissioners in respect to the lands described in said request, and in said petition described. Such request in writing having been duly filed in said court. That we, the said undersigned commissioners, pursuant to said order of the circuit judge, made on the 10th day of December, 1888, as aforesaid, met on the 10th day of January, A. D. 1889, at 2 o'clock in the afternoon of that day, at the office of Champ Green, esq., in the village of Superior, in said county, and then and there made out a notice in writing which we addressed to the owners of and persons interested in said lands and *and* premises of the time and place when and where we would
361 meet to view said lands and premises and appraise and determine the value of the real estate proposed to be taken in this proceeding by said railway company, and the damages sustained by the owners *owners* by reason of the taking, and fix the amount of compensation to be made therefor to each of such owners or persons interested in the premises. A copy of which said notice is hereto annexed and made a part of this report.

And that we caused said notice to be duly served upon said owners and persons interested in said premises, as will more fully appear by the affidavits and proofs of service, and the publication thereof, filed and entered in said court, reference thereunto being hereby expressly made.

And we further report that after having met and caused said notice to be made out, we thereupon adjourned to meet again at the time and place fixed in and by said notice.

That pursuant to said adjournment we again met together on the 5th day of February, A. D. 1889, at two (2) o'clock in the afternoon of that day, on the land and premises described in said notice, and in said petition and written request described, that being the time and place mentioned therein for such meeting, and did then and there view the same and heard the allegations of the parties, and did appraise, ascertain, and determine the compensation to be made to the owners thereof and persons interested therein for the taking of the same by said railway company, and the damages sustained by reason of such taking as hereinbefore set forth, and we find and award.

For the value of all that piece, parcel, or strip of land forty (40) feet in width of and across the northwest quarter of section twenty-six (26) in township forty-nine (49), north of range fourteen (14) west, in the incorporated village of Superior, in said county of Douglas, included between two parallel lines forty (40) feet apart on one on each side of the center line of the proposed railway of said petitioner, the Duluth, South Shore and Atlantic Railway Company, as the said line is surveyed, staked out, and located, and as the same appears upon a map thereof annexed to said petition, one of which said including and boundary lines is parallel with and eleven and one-half (11½) feet distant, measured northerly, from said center line of said railway, and the other of said including lines is parallel with and twenty-eight and one-half (28½) feet distant, measured southerly, from the said center line of the railway aforesaid, the said piece, parcel, and strip of land extending in an easterly and westerly course through and across and forming a part of the above-mentioned quarter section of land, and being fully described hereinbefore and in the said petition and the map thereto attached, to which reference is hereby made; the said value thereof we have appraised, ascertained, and determined to be seventeen hundred dollars, and the damages to the remainder of said quarter section of land sustained by the owner by reason
362 of the taking thereof to be nothing, and we therefore award to James Stinson, of Chicago, Illinois, the owner of the said premises, the said sum of seventeen hundred dollars ($1,700) for the value of said described strip and parcel of lands so taken, and the said sum of nothing as damages sustained by such owner for and by reason of the taking thereof, the whole compensation therefor to said owner so fixed and determined by us being seventeen hundred dollars.

We find that the said William H. Newton occupies and is in possession of the said northwest quarter of section 26 in township forty-nine (49) of range fourteen (14), and has made certain improvements thereon with intent to claim said lands and premises under the homestead law, through and over which said improvements the petitioner, said Duluth, South Shore and Atlantic Railway Company, has constructed and is operation its line of railway upon said right of way. We have therefore appraised, ascertained, and determined the value of such improvements so made by such occupant, William H. Newton, upon the land aforesaid, as the sum of six hundred dollars ($600), and the damages sustained by him by reason of the taking thereof to be two hundred dollars ($200),

and we fix and award to said occupant as compensation therefore the sum of two hundred dollars.

The proceedings in said matter having been discontinued as to the United States, one of the parties, and such discontinuance being filed in writing on the part of said petitioner, the Duluth, South Shore and Atlantic Railway Company, the same is annexed to this report and reference thereto made.

We therefore make no findings nor award in the premises in respect to or to the United States.

In witness whereof we have hereunto set our hands this seventh day of February, A. D. 1889.

A. C. BROWN,
JOHN C. BERTRAND,
O. A. BRITTON,
Commissioners.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, correct, and complete copy of the report of commissioners in the above-entitled proceeding, in so far as the same applies to the lands in this suit, and that the foregoing is made pursuant to the stipulation of parties hereto.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, 1899.

GEO. R. HUGHES,
Notary Public, Douglas County, Wis.

363 DEFENDANTS' EXHIBIT A11.—*Report of commissioners in the matter of N. W. C. Ry. Co.—Geo. R. Hughes, notary public.*

STATE OF WISCONSIN, *County of Douglas:*

In the circuit court.

In the matter of the petition of the North Western Coal Railway Company for the appointment of commissioners to award compensation for the taking of lands for right of way for main line and for terminal grounds, yards, buildings, and station grounds.	Report of commissioners. Cause No. 3923.

To the circuit court for Douglas County, Wisconsin, Hon. R. D. Marshall, circuit judge:

We, the undersigned, George S. Rogers, Eugene McNair, and Michael S. Bright, having been, by an order of this court, dated March 6th, 1894, appointed commissioners herein, for the purposes named in said order of appointment, do respectfully report—

That, pursuant to such order of appointment, we met upon the 8th day of March, 1894, and took the oath as such commissioners, all of which was required by said order of March 6th, 1894. That upon said 8th

day of March, 1894, we were personally served with a written request, by said petitioner, that we proceed to act and ascertain and appraise the compensation to be made to the persons interested in this proceeding, under section 1848 of the Revised Statutes of Wisconsin, and to determine the necessity for the taking of any part of the real estate mentioned and described in the petition herein as the property of the Northern Pacific Railroad Company and of the Superior Short Line Railroad Company, and to ascertain and appraise the compensation to be made to said railroad companies by reason of such taking, which said request is filed in the office of the clerk of this court. That we then adjourned to meet again on the 9th day of March, 1894, and on the 9th day of March, 1894, we met pursuant to adjournment and fixed April 2nd, 1894, as the day upon which we would meet and view the premises, and we caused notice of such meeting to be given in the manner required by law and the order of this court, as will be seen by proof of publication of such notice of such meeting and proof of personal service of the said notice upon the parties residing within this State, in the manner required
364 by law and the order of this court upon file in the office of the clerk of this court.

That upon April 2nd, 1894, we met pursuant to such notice and viewed the premises described in the petition herein. At such meeting we were attended by Mess. E. B. Manwaring, attorney for petitioner, and James Kasson in person, and Thomas W. Shackleford, attorney for Richard H. Robe, Thos. Dellwo, Sarah B. Kinkead, James M. Johnston, trustee, Carrie W. Hanson, Sarah Hanson, Charles R. Hanson, and Carrie L. Thomas and Eliza A. Nevins. That after viewing said lands we adjourned the hearing thereof to April 4th, 1894, at 9 o'clock a. m.

That on the 4th day of April, 1894, we met pursuant to such adjournment and heard the parties interested therein. That at such hearing we were attended by the following-named persons: E. B. Manwaring, attorney for petitioner herein; Thomas W. Shackleford, attorney for Richard H. Robe, Thomas Dellwo, Sarah B. Kinkead, James M. Johnson, trustee, Carrie W. Hanson, Charles R. Hanson, and Carrie L. Thomas, Eliza A. Nevins, and Samuel W. Whitmore; also N. S. Bowers, appearing in person, and stated to the commissioners that he claims an interest in Morisset out lots numbered 29 & 30, and asking that the award therefor be made to him; also Lars Lenroot, in person and for Louis J. Lenroot and I. L. Lenroot; also Hiram Hayes, in person and for Mary E. Hayes; also D. E. Roberts, guardian ad litem for Leo and Violet Jordan and Georgiana Morisset, Rosalie Morisset, and George Morisset, infants; also Wm. M. Gill, in person and as attorney for Hester E. McDowell. At such hearing, in our presence, it was stipulated by and between the petitioner and the respondent Rochard H. Robe, by their respective attorneys, that the petition herein be amended so as to ask for a right of way in Stuart avenue, adjacent to lots 445 & 447 on East Second street, of the width of twenty feet on each side of the center line of said track and included between lines parallel with each other and each distant twenty feet from said center line. Said meeting was continued to April 5th, 1894, at 9 a. m.

On the 5th day of April, 1894, at 9 o'clock a. m., we met and considered said awards, and at such meeting there appeared Richmond

Rochester, agent for Bettie Ewing and Susan Moss Hart, and Cleophas Morissett, general guardian of Georgiana Morissett, Rosalie Morissett, and George Morissett. After considering the matters presented to us, as directed by the orders of this court, we do further report that we have carefully considered the value of each piece of said land taken, and damages to the remainder thereof by reason of such taking, and also the necessity for the crossing of the Northern Pacific Railroad Company's main line, and the Superior Short Line Railroad
365 Company's main line by petitioner herein and the damages to each of said respondents by reason of such crossing, and we make the following findings and awards, to wit:

(All is omitted except lands in suit.)

Parcel No. 21. For compensation for taking that portion of the northwest quarter of the northwest quarter of the northeast quarter of section 5, township 48 north, of range 13 west, as described in said petition, the sum of eleven and 40 100 dollars and for damages to the remainder of said lands by reason of such taking, the sum of two dollars; in all, the sum of thirteen and 40 100 dollars. That the same appears to be owned by James Stinson, of Chicago, Illinois. That said lands are subject to a tax lien of a tax certificate amounting to the sum of $1,554.02, with interest thereon from the 16th day of May, 1893, based upon the tax sale of 1893. We direct that said award be paid into court to be applied as the court shall direct.

Parcel No. 22. For compensation for taking that portion of the northwest quarter of section 5, township 48 north, of range 13 west, in Douglas County, Wisconsin, as described in the petition, the sum of one thousand five hundred sixty-nine and 60/100 dollars, and for damages to the remainder of said lands by reason of such taking, the sum of one hundred and fifty dollars; in all, the sum of seventeen hundred and nineteen and 60 100 dollars ($1,719.60). That said tract appears to be owned by James Stinson, of Chicago, Illinois, and is also claimed by George Howenstein and J. L. Lacey, who both reside in Superior, Wisconsin. That we are unable to determine who is rightfully entitled to said award. That said premises are subject to the lien of a tax certificate amounting to the sum of $1,535.68, with interest thereon from the 16th day of May, 1893, based upon the tax sale of 1893. We direct that said award be paid into court for the benefit of the person or persons found entitled to the same, or for such application thereof as the court shall direct.

Parcel No. 23. For compensation for taking that portion of the southeast quarter of the northeast quarter of section 6, township forty-eight north, of range 13 west, in Douglas County, Wisconsin, as described in the petition herein, the sum of three hundred and sixty and 80 100 dollars, and for damages to the remainder of said lands by reason of such taking, the sum of fifty dollars; in all, the sum of four hundred and ten and 80 100 dollars. That said tract appears to be owned by James Stinson, of Chicago, Illinois, and is claimed by George Howenstein and J. L. Lacey, both of Superior, Wisconsin. That we are unable to determine who is entitled to said award. That said land is subject to a portion of the lien of a tax certificate amounting to the sum of $1,677.78, and interest from the 16th day of May, 1893, based upon the tax sale of
366 1893. That we are unable to determine who is entitled to said award, and we direct that the same be paid into court for the

benefit of the person or persons found entitled to the same or for such application as the court shall direct.

* * * * * * *

All of which is respectfully submitted.
Dated this 13th day of April, 1894.

GEO. S. ROGERS.
EUGENE MCNAIR.
MICHAEL S. BRIGHT.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath, says that the foregoing is a full, true, correct, and complete copy and transcript of the report of commissioners in the above-entitled proceeding, in so far as the same applies to the lands in this suit, and as stipulated to be made by the parties hereto.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29 day of August, 1899.

GEO. R. HUGHES,
Notary Public, Douglas Co., Wis.

DEFENDANTS' EXHIBIT A12.—*Deed from James Stinson to Superior Short Line Ry. Co.—Geo. R. Hughes, notary public.*

No. A85676.

Henry J. Stinson
to
Superior Short Line Railway Company.

Deed record, vol. 52, Douglas County, Wisconsin, p. 257.
Filed for record the 28th day of August, A. D. 1894, at 10.30 o'clock a. m.

This indenture, made the seventh day of July, in the year of our Lord one thousand eight hundred and ninety-four, between Henry J. Stinson, unmarried, of the city of Chicago, Illinois, party of the first part, and the Superior Short Line Railway Company, a corporation of the State of Wisconsin, party of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of eleven thousand three hundred and sixty five ($11,365) to him in hand paid by the said party of the second part, the
367 receipt whereof is hereby confessed and acknowleged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, its successors and assigns forever, all the following-described real estate situated in the county of Douglas and State of Wisconsin, described as follows, to wit: All that certain tract or parcel of land situate, lying, and being in the northwest quarter of section four (4), in township forty-eight (48), range thirteen (13) west, bounded and described as follows, to wit: Commencing at the northwest corner of said section four (4) and running thence east on the north line of said section, eight hundred and twenty-four and 65/100 feet (824.65) to a point which is the place of beginning; running thence east three hundred (300) feet on said north

line of said section four (4) to the west line of the right of way of the Chicago, St. Paul, Minneapolis and Omaha Railway Company; thence in a southwesterly direction along said west line of said right of way and parallel with and distant fifty (50) feet westerly from the center line of the main track of the said Chicago, St. Paul, Minneapolis and Omaha Railway Company two thousand three hundred (2,300) feet to a point; thence in a northwesterly direction to a point in the south line of the northwest quarter of said section four (4), which is eight hundred and twenty-four and 65/100 (824.65) feet distant on said south line from the west line of said section four (4), thence north parallel with and 824.65 feet distant easterly from said west line of said section four (4) to the place of beginning, containing about twenty-two and (22/73) acres of land, together with all and singular the heraditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectency of, in, and to the above bargained premises and their heraditaments and appurtenances.

To have and to hold the said premises as above described, with the heraditaments and appurtenances, unto the said party of the second part and to its successor and assigns forever.

And the said Henry J. Stinson for himself and his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, its successors and assigns, that at the time of the unsealing and delivery of these presents he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasable estate of inheritance in the law in fee simple and that the same are free and clear from all incumbrances whatever.

And that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, its successors
368 and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal this 7th day of July, A. D. 1894.

HENRY J. STINSON. [SEAL.]

Sealed and delivered in presence of—
COPLIN JAMES.
EDWIN STEWART.

STATE OF ILLINOIS, *Cook County, ss:*

Personally came before me this 7th day of July, A. D. 1904, the above-named Henry J. Stinson, to me known to be the person who executed the foregoing instrument and acknowledged the same.

[NOTARIAL SEAL.] EDWIN STEWART,
Notary Public, Cook County, Illinois.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, correct, and complete copy and transcript of deed, record 52, page 257, in the office of the register of deeds for Douglas

County, Wisconsin, containing a deed from Henry J. Stinson to the Superior Short Line Railway Company and of the whole of the said record.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, A. D. 1899.

GEO. R. HUGHES,
Notary Public, Douglas Co., Wis.

369 DEFENDANTS' EXHIBIT A13—*Warranty deed, H. J. Stinson to E. W. Winter—George R. Hughes, notary public.*

No. A 87060. Deed Record, volume 57, page 143, Douglas County, Wis.

Henry J. Stinson to Edwin W. Winter. Warranty deed. Filed for record Nov. 14, A. D. 1894, at 2 o'clock p. m.

This indenture, made this tenth day of November in the year of our Lord one thousand eight hundred and ninety-four, between Henry J. Stinson (unmarried), of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Edwin W. Winter, of the city of St. Paul, county of Ramsey and State of Minnesota, party of the second part:

Witnesseth, that the party of the first part, for and in consideration of the sum of twenty thousand five hundred and five ($20,505) dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the following described real estate situate, lying, and being in the county of Douglas and State of Wisconsin, described as follows, to wit:

All that part of the northeast quarter of the northwest quarter of section numbered four (4), in township numbered forty-eight (48), north of range numbered thirteen (13), west of the fourth principal meridian which lies east of a line drawn parallel with on the east side of and fifty (50) feet distant from the center line of the main track of the railway of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, as the same is constructed across said above-described land at the date hereof, excepting, however, from this conveyance a certain strip or belt of land one hundred (100) feet in width extending across and forming a part of said premises, which said strip or belt of land is included between lines drawn parallel with, one on each side of and each distant fifty (50) feet from, the center line of the main track of the railway of the Northern Pacific Railroad Company as the same is constructed across said land at the date hereof.

Together with all and singular the heraditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy
370 of, in and to the above-bargained premises and their heraditaments and appurtenances, subject to the taxes of 1894.

To have and to hold the said premises, as aboved described, with the heraditaments and appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Henry J. Stinson, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and that the same are free and clear from all incumbrances whatever.

And that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

HENRY J. STINSON. [SEAL.]

Sealed and delivered in presence of—
COPLIN JAMES.
EDWIN STEWART.

STATE OF ILLINOIS, *County of Cook, ss:*

Personally came before me this 10th day of November, A. D. 1894, the above-named Henry J. Stinson (unmarried), to me personally known to be the person who executed the foregoing instrument and acknowledged the same.

[NOTARIAL SEAL.] EDWIN STEWART,
Notary Public, Cook County, Illinois.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath, says that the foregoing is a full, true, correct, and complete copy and transcript of Deed Record, volume 57, page 143, Douglas County, Wisconsin, in the office of the register of deeds for said county, and which record is of a certain deed from Henry J. Stinson to Edwin W. Winter and of the whole of said record.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29th day of August, A. D. 1899.

GEO. R. HUGHES,
Notary Public, Douglas County, Wis.

371 DEFENDANTS' EXHIBIT A 13½.—*Warranty deed, H. J. Stinson to E. W. Winter—Geo. R. Hughes, notary public.*

No. A. 87131. Deed recorded, vol. 55, page 398, Douglas County, Wisconsin.
Henry J. Stinson. Warranty deed.
to Filed for record Nov. 19, 1894, at 9 o'clock, a. m.
Edwin W. Winter.

This indenture, made this tenth day of November, in the year of our Lord one thousand eight hundred and ninety-four, between Henry J.

Stinson, of Illinois (unmarried), of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Edwin W. Winter, of the city of St. Paul, county of Ramsey and State of Minnesota, party of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of one hundred and ninety-five ($195.00) dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, and conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey and confirm, unto the said party of the second part, his heirs and assigns forever, the following described real estate, situate, lying, and being in the county of Douglas and State of Wisconsin, to wit:

All that part of the northwest quarter of the northwest quarter of section numbered four (4), township numbered forty-eight (48), north of range numbered thirteen (13) west, lying east of the easterly line of the right of way of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, containing thirty-eight one hundredths (38/100) of an acre of land.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in, and to the above-bargained premises and their hereditaments and appurtenances.

To have and to hold the said premises, as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever, subject to the taxes of 1894.

And the said party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to
372 and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents the said party of the first part is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasable estate of inheritance in the law in fee simple, and that the same are free and clear from all incumbrances whatever:

And the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, said first party will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

HENRY J. STINSON. [SEAL.]

Sealed and delivered in presence of—

COPLIN JAMES.

EDWIN STEWART.

STATE OF ILLINOIS, *County of Cook, ss:*

Personally came before me this tenth day of November, A. D. 1894, the above-named Henry J. Stinson, unmarried, to me personally known to be the person who executed the foregoing instrument and acknowledged the same.

[NOTARIAL SEAL.] EDWIN STEWART,
Notary Public, Cook County, Illinois.

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, correct, and complete copy and transcript of Deed Record 55, page 398, Douglas County, Wisconsin, in the office of the register of deeds for said county, and which record is of the certain deed from Henry J. Stinson to Edwin W. Winter and of the whole of said record.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29 day of August, 1899.

GEO. R. HUGHES,
Notary Public, Douglas County, Wis.

373 DEFENDANTS' EXHIBIT A 14.—*Deed, James Stinson to D., S. S. & A. Ry. Co.—Geo. R. Hughes, notary public.*

Deed Record, volume 60, Douglas County, Wisconsin, page 377. No. 96883. James Stinson et al. to Duluth, South Shore and Atlantic Railway Company. Right of way deed filed for record May 1st, 1896, at 4 o'clock p. m.

This indenture, made this 31st day of May, A. D. 1895, by and between James Stinson and Sarah E. Stinson, his wife, and Henry J. Stinson (unmarried), all of Chicago, in the State of Illinois, parties of the first part, and the Duluth, South Shore and Atlantic Railway Company, a corporation, party of the second part:

Witnesseth, That the said parties of the first part, for and in consideration of the sum of sixteen hundred and twenty-five ($1,625) dollars, to them in hand paid by the party of the second part, the receipt whereof is hereby confessed, have granted, bargained, sold, remised, released, and conveyed, and by these presents do grant, bargain, sell, remise, release, and convey, unto the said party of the second part, its successors and assigns, the easements and right to enter upon, use, occupy, and enjoy for railway purposes the following-described strip or parcel of land situated and being in the county of Douglas and State of Wisconsin, to wit: That certain strip or parcel of land fifty (50) feet in width, extending over and across and being part of the west half of the northeast quarter of section five (5), township forty-eight (48), range thirteen (13) west, and which is included between lines parallel with, one on each side of and each distant twenty-five (25) feet from the center line of the railway of the party of the second part, as the same is now located, constructed, and operated over and across the said above-described tract of land, and as the same appears upon a map thereof hereto annexed, containing three acres and one-quarter of an acre, and do hereby release and forever discharge the said

party of the second part, its successors and assigns, of and from any and all claim or claims for damages arising from or growing out of the entering upon said described tracts of land or any of lands embraced within the north half of sections four (4) and five (5) in said township and range by the party of the second part, and any and all trespass which it may have heretofore committed upon said lands. It being the true intent and meaning of this instrument that said sum of sixteen hundred and twenty-five dollars is paid by the party of the second part and received by the party of the first part in full satisfaction, payment, and discharge of any and all claims or demands for or on account of any such trespass, as well as for the permanent easement hereinbefore
374 specifically granted. To have and to hold said easement and right of way hereinbefore granted to the party of the second part, its successors and assigns, so long as used for railway purposes. And the said James Stinson and Henry J. Stinson, parties of the first part, for themselves and for their heirs, executors, and administrators do hereby covenant grant, bargain, and agree to and with said party of the second part, its successors and assigns, that they are well seized of the lands and premises hereinbefore described as of a good, sure, perfect, and indefeasable estate of inheritance in the law in fee simple and have a good right to sell and convey the easement and right of way hereinbefore described and to execute the foregoing release and discharge, and that the above-bargained easement and right of way in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, they will forever warrant and defend: Subject to all taxes and assessments and the consideration hereinbefore mentioned to wit: The sum of sixteen hundred and twenty-five dollars is hereby fixed, agreed upon, and determined as the liquidated measure of damages for a breach of the covenants hereof.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

JAMES STINSON. [SEAL.]
SARAH E. STINSON. [SEAL.]
HENRY J. STINSON. [SEAL.]

In presence of—
COPLIN JAMES.
EDWIN STEWART.

STATE OF ILLINOIS, *Cook County, ss:*

Personally came before me this 31st day of May, A. D. 1895, the above-named grantors, James Stinson and Sarah E. Stinson, his wife, and Henry J. Stinson, to me known to be the person who executed the foregoing instrument and acknowledged the same.

[NOTARIAL SEAL.] EDWIN STEWART,
Notary Public, Cook County, Illinois.

375 STATE OF ILLINOIS, *county of Cook, ss:*

I, Philip Knofp, clerk of the county court in and for said county, which court is a court of record having a seal, do hereby certify that Edwin Stewart, by and before whom the foregoing acknowledgement was

taken, was at the time of taking the same a notary public residing in said county, and was duly authorized by the laws of said State to take and certify acknowledgements or proofs of deeds of lands in said State, and, further, that I am well acquainted with the handwriting of said Edwin Stewart, and that I verily believe that the signature to said certificate of acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this fourth day of June, 1895.

[SEAL OF COUNTY COURT.] PHILIP KNOPH, *Clerk.*

STATE OF WISCONSIN, *Douglas County, ss:*

Michael S. Bright, being first duly sworn, upon oath says that the foregoing is a full, true, correct, and complete copy and transcript of Deed Record 60, page 377, Douglas County, Wisconsin, in the office of the register of deeds for said county, and which record is of a certain deed from James Stinson, Sarah E. Stinson, his wife, and Henry J. Stinson, to the Duluth, South Shore and Atlantic Railway Company, and of the whole of said record.

MICHAEL S. BRIGHT.

Subscribed and sworn to before me this 29 day of August, A. D. 1889.

GEO. R. HUGHES,
Notary Public, Douglas County, Wis.

(NOTE.—The map referred to is of the right of way of the D., S. S. & A. Ry. over west ½ of northwest quarter of section 5–48–13.)

376 *Certificate.*

STATE OF WISCONSIN, *Douglas County, ss:*
Western District of Wisconsin.

I, George R. Hughes, a notary public in and for the county of Douglas and State of Wisconsin, before whom the depositions herein were taken by agreement of the parties in the above-entitled cause, do hereby certify that upon the day named in said depositions hereto annexed I was attended by John B. Simmons, solicitor for complainant, and A. L. Sanborn, solicitor for defendants, and by James Bardon and Michael S. Bright, witnesses; that said witnesses were each duly sworn to tell the truth, the whole truth, and nothing but the truth in relation to the matter of difference between said parties, and examined, and the depositions of each reduced to writing and read to the respective witnesses by whom given, and each subscribed in my presence, and that said exhibits "A 2," "A 3," "A 4," "A 6," "A 7," "A 8," "A 9," "A 10," "A 11," "A 12," "A 13," "A 13½," "A 14," hereto annexed, were introduced in evidence during the taking of said depositions.

Dated this 29th day of August, 1899.

GEO. R. HUGHES,
Notary Public, Douglas County, Wisconsin.

(Endorsed:) Circuit court of the United States, western district of Wisconsin. United States of America, complt., vs. James Stinson et al., defts. Evidence taken at Superior. Filed Sept. 16, 1899. F. W. Oakley, clerk.

Afterwards, to wit, November 2, 1899, filed continuation of the cross-examination of Geo. N. Hillman and Peter Norell, as follows:

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed subpœna on the therein-named Peter Norell, by handing to and leaving a true copy thereof with him personally at , in said district, on the 24th day of October, A. D. 1897.

WM. H. GRIMSHAW, *U. S. Marshal.*
By C. A. NIMROCKS, *Deputy.*

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377 *Subpœna.*

United States circuit court, district of Minnesota, third division.

The President of the United States of America to Peter Norrell, greeting:

You are hereby commanded to be and appear, without excuse or delay, before Fred W. Gosewich, esq., a notary public in and for the district of Minnesota, at the office of the judge of probate of Ramsey Co., St. Paul, Minnesota, on the 25th day of October, A. D. 1899, at 10 o'clock a. m., then and there to testify and the truth to say, in a certain matter of controversy in the U. S. circuit court for the western district of Wisconsin, depending between the United States of America, plaintiff, and James Stinson et al., defendants, on the part of the said plaintiff; hereof fail not.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of September in the year A. D. 1899.

Issued at my office, in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

[L. S.]

HENRY D. LANG,
Clerk of said Circuit Court.

D. F. JONES, *U. S. Attorney.*
By JOHN B. SIMMONS, *Special Asst.*

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Continuation of the cross-examination of George N. Hillman and Peter Norel taken before the undersigned Fred. W. Gosewisch, a notary public in and for Ramsey County, State of Minnesota, at the county court building, in the city of St. Paul, in said county and State, on the 12th and 13th days of June, A. D. 1899.

Appearances: John B. Simmons for complainant; A. L. Sanborn for defendants.

378 Stipulated by and between the attorneys for the respective parties above named, before the examination of said witnesses, that said depositions may be taken down in shorthand by W. O. Hillman, a stenographer, and afterwards extended upon the typewriter, and the subsequent reading of the depositions of the witnesses and the signatures of the witnesses is hereby waived, and said depositions, when so taken and extended on the typewriter and certified by the notary, may be used upon the trial of this action with the same force and effect as if originally taken down in longhand by the notary and thereafter read over to or by the witnesses and subscribed by such witnesses.

Stipulated also that any and all objections to the testimony of said deponents, or to questions propounded to said despondents, except objections going to the form of the question or on the ground that the evidence is not the best evidence, may be raised at the trial with the same force and effect as if formally interposed at the taking of the depositions.

Testimony of Peter Norell.

PETER NORELL, recalled for further cross-examination, testified:

Examined by Mr. SIMMONS:

Q. Your name is Peter Norell?

A. Yes, sir.

Q. And you are the same Peter Norell who was sworn and examined as a witness in this case in June last?

A. Yes.

Q. You stated, I believe, at that time, Mr. Norell, that you never sold this land——

A. Not what I know of.

Q. Which you claimed to have entered at Superior, Wisconsin, to the defendant, James Stinson; do you still adhere to that?

A. I couldn't sell it; I don't understand it. I couldn't sell it, and the best I know of it I took the preemption for my own use.

Q. I say, you still say that you did not sell the land to Mr. Stinson, do you?

A. No, not what I know of.

Q. Did not Mr. Stinson pay you money for the land when you went down to Willow River?

A. Pay me?

Q. To prove up.

A. For to prove up.

Q. Yes.

A. No, he didn't pay a cent for it. I furnished my own provisions to go down and back.

Q. Do you know what papers you signed down there at Willow River at that time?

A. Signed? Well, I don't know, if it was something at the land office, from the land office.

Q. You signed some papers down there, did you?

379 A. Well, that is what it looks like it, what you call it, the certificate, something like that. I couldn't wrote my own name that time.

Q. Did you understand what papers you signed down there?

A. No, sir; I don't understand it at all, more than just all the Swede fellows.

Q. Did you see Mr. Stinson out at Center City after you were down to Willow River, in the month of June, 1856, in company with Mr. Levi W. Folsom, of Taylor's Falls?

A. No, sir. They were by Folsom at Taylor's Falls, and if he been up there I forget that; it is so long ago.

Q. Well, you know Mr. Folsom, do you not?

A. Yes; I know him just so well as I know myself. I work for him a good deal, too.

Q. Now, didn't he come up there with Stinson to Centre City in June, 1856?

A. That is more than I can recollect, and I believe he never been there up to my shanty that time. I don't know, though; I can't tell; I am not sure; so far long ago.

380

381 Q. Well, don't you remember seeing Stinson in 1856 about the month of June?

A. Well, that is more than I can tell. I forgot everything about it.

Q. Did he pay you any money for this land in the year 1856?

A. No, sir; not a cent.

Q. Did he pay your wife any money?

A. No, sir; not a cent.

Q. What is your wife's name?

A. It is Mrs. Norell—Mrs. Peter Norell.

Q. Is her first name Bretta?

A. Yes; Bretta Norell.

Q. Bretta A., is it? Does she have a middle initial—Bretta A. Norell?

A. No—yes; I guess yes, I spell it with "ah."

Q. You are positive that if Stinson came out there with Folsom he didn't pay you any money?

A. Not a cent. And my wife she told me before I went yesterday from home she not got a cent.

(Counsel for the defendants moved to strike out the last answer as hearsay.)

WITNESS. (Continuing) And if I recollect right and remember it right (I ain't sure about it) Stinson been up there once when I ain't been home, and he say he want her to sign and he give her a dress. Never she get the dress. If she get a cent it is named on the paper. She never get a dress—that is what she told me. And still that time I wasn't to home, so I don't know anything about it.

(Counsel for the defendants object to statements of the witness as to what his wife told him.)

Q. Could you talk or understand English in 1856, Mr. Norell?

A. No, sir. Oh, well, probably just so much I could tell the difference in "No" or "Yes."

Q. You had then been in the country two or three years, hadn't you?

A. Well, I had been, and I stay home one year and a half, and then I went in the woods. I couldn't learn much that time. I was 28 years old that time.

Q. You knew Otto Wallmark well, didn't you?
A. Yes; I know him.
Q. Could Otto talk and understand English in 1856?
A. Who?
Q. Otto Wallmark?
A. I don't know; I guess he could talk a little; and I don't know. That is more than what I can tell. It was a good ways between us, and still I know him; I know the both of them, both brothers of them.
382 Q. He was a native of Sweden, wasn't he?
A. Eh?
Mr. SANBORN. He was a Swede?
WITNESS. Oh, a Swede!
Q. Otto Wallmark was a Swede, wasn't he?
A. Yes, sir.
Q. He understood the Swedish language well, didn't he?
A. Yes.
Q. Are you a citizen of the United States, Mr. Norell?
A. Me?
Q. Yes.
A. I guess I are. I took the first paper in Taylor's Falls, and then I took the first homestead since Lincoln was elected President, and I took a homestead, and then I suppose I am.
Q. You became a full citizen then, did you?
A. Well, what did you say?
Q. I say, you became a full citizen at the time Lincoln was elected?
A. Yes; he took the chair on the 4th of March, and the first New Year's day it was open for homestead, and then I was the first man—no, the second man in Taylor's Falls that took a homestead at that time, and then I think that is a citizen enough and I been a citizen ever since that time.
Q. Where did you take out your first papers?
A. Taylor's Falls.
Q. Was it before Mr. Stannard, the deputy clerk?
A. Yes.
Q. I show you now, Mr. Norell, what purports to be a copy of your first papers sworn to before Mr. Stannard on the 7th day of August, 1854.
Mr. SANBORN. It is objected to because the original is not produced or its absence accounted for.
WITNESS. Where did you get that paper? You got that from Stannard? You know better than I do. I can't recollect the day I took out the paper.
Q. It came from the land office, Mr. Norell.
Mr. SANBORN. It came from Washington—a copy. It came from Washington.
A. Oh, I thought you got it from Stannard.
383 Q. No, it is signed by him. Was that the time that you took out your first papers, Mr. Norell?
A. Yes, sir; in Taylor's Falls, from Stannard.
Q. On the 7th day of August, 1854?

A. Well, I can't say what day it was. It was sometime that summer anyhow, if it was August or June or July. It was before I went up to Superior.

Q. Was Swen Larson there with you at the time you took out your first papers?

A. Well, that is more than I can tell. There was four or five or six of them, and I can't recollect the names who was there at that time.

Q. Who were the other four or five?

A. The other four or five?

Q. Yes.

A. Well, I don't know. I guess they is dead most of them. Swen Lorson and his brother they are dead; I know that. And Nels Berg and John Berg is dead, and Peter and his brother is dead.

Q. Well, this party that were there together, were they some of the men who went to Superior in your party?

A. Yes, they went up to Superior, all of them. We was hired out to go up there and work, and we went.

Q. Now, this appears to have been on the 7th day of August; how long was it after that that you went up to Superior?

A. Well, it was some time; the nearest I can tell about the middle, a little after the middle of August. I can't tell just sure what day it was we start off.

Q. Who was it you stated, Mr. Norell, hired you to go up to Superior?

A. I can not recollect who they was. There was one fellow from Taylor's Falls—two of them—came up there and hired us.

Q. One of them was John Johnson, was it?

A. Well, I think there was a John Johnson went and another one.

Q. Swenson or Ogreen?

A. Ogreen, was it? No, it was the blacksmith from Taylor's Falls.

Q. You don't remember his name?

A. No.

Q. Was he one of the party that went up with you?

A. No, he wasn't. Ogreen and John Johnson—they was; both of them went up with us at the same time.

Q. Which one was it, Johnson or the other man, that suggested you should take out your first papers?

A. Well, I don't know, I can't tell. There was four or five of us there, and they said, "We are going to take out the first papers
384 now, we are going to have a right to vote for schools and for President and everything." That is what they say.

Q. Well, was it the blacksmith that spoke to you about it?

A. I think it was or there was two of them spoke to me about they going to get the papers.

Q. Well, the two who spoke to you—were they John Johnson and the blacksmith?

A. Oh, they was together.

Q. You think it was those two, do you?

A. Eh?

Q. You think it was those two that spoke to you about it, do you?

A. Well, they was both talking about it. They say we ain't got no right to vote or to say a word before we get out the paper. That is what

they told me. And then I thought it don't make any difference; I came here to settle in here in the United States, and I thought it was no much difference I going to take the paper out.

Q. Taylor's Falls was then the county seat of Chisago County, was it?

A. I suppose so. There wasn't no Center City that time, and I think the county seat was in Taylor's Falls.

Mr. SIMMONS. We desire to offer in evidence, in connection with the cross-examination of this witness, this certified copy of the declaration of Peter Norell of his intention to become a citizen of the United States.

(Paper was marked "Ex. A 1, W. O. H."

Objected to by counsel for defendants as incompetent, irrelevant, and immaterial.

It is conceded that the Exhibit A 1 was found among the papers of the General Land Office of the United States relating to the entries in question in this suit.)

Testimony of George N. Hillman.

GEORGE N. HILLMAN, recalled, testified:

Examined by Mr. SIMMONS:

Q. Your name is George N. Hillman?

A. Yes, sir.

Q. You are court reporter here in St. Paul and the same George N. Hillman that testified in this case on the 12th and 13th days of June last?

A. I am.

385 Q. You testified at that time to taking the testimony of one Lorentz Johnson in a certain case pending in the United States circuit court for the western district of Wisconsin in which John E. Gagnelius and John Ogreen were plaintiffs and James Stinson defendant?

A. Yes.

(It is stipulated that in order to save expense and trouble of proving the record that the action of Gagnelius and Ogreen against Stinson was ejectment, brought under the statutes of Wisconsin, and that the declaration or complaint was in form required by the Wisconsin statute, that an answer was served in the case, and a copy thereof is herewith offered in evidence. No proceedings were taken in the case except the joining of issue and the taking of the testimony as already testified to by Mr. Hillman.

Copy of answer marked "Ex. A. 2, W. O. H."

It is further stipulated that the suit was duly entered and docketed in the clerk's office at Madison, Wisconsin, in the circuit court of the United States for the western district of Wisconsin, and that the original record is there on file, including the depositions testified to by the witness.)

Q. In the testimony given by you in June last, you did not give the whole of Mr. Lorentz Johnson's deposition, did you?

A. I am not sure without examining my testimony at that time.

Q. Did you at that time testify from your original shorthand notes or from copy written out?

A. My recollection is I testified from the typewritten copy of the deposition.

Mr. SANBORN. There were no shorthand notes taken; it was taken right on the machine.

Q. Will you examine this paper which I now show you, Mr. Hillman, and state whether or not that is the deposition and the whole of the deposition of Lorentz Johnson taken at the time mentioned by you in your former testimony?

A. This appears to be and I believe is the whole of the deposition of said Johnson taken at the time indicated in your question.

Mr. SIMMONS. I desire to offer in evidence the whole of the deposition, and with your permission, Mr. Sanborn, we will stipulate
386 to substitute the copy for the original, with notice, subpœna and return.

(It is stipulated that a copy may be used instead of the original, said copy being marked "Ex. A 3," and attached hereto.)

Q. In taking this deposition of Lorentz Johnson, you omitted to take down the questions, and simply took the testimony in narrative form, did you not, Mr. Hillman?

A. That is my recollection.

Q. Are you able at the present time to state what portion of that testimony was incorporated into the question and how much of it was stated independently by the witness?

A. I can simply say that I took the testimony on the typewriter in narrative form. Of course the object and purpose was to take the testimony of the witness, in that manner.

Q. As a matter of fact, however, you are not now able to distinguish between those portions of the testimony which were incorporated into the question and those which were not, are you?

A. No; I am not.

Cross-examination by Mr. SANBORN:

Q. Did you, Mr. Hillman, in taking that testimony accurately take down and express the testimony of the witness irrespective of the question?

A. That was my intention, and the testimony was read to the witness before he signed it.

Q. Have you any recollection of the general purport of that testimony taken there that day?

A. Not independently of the record.

Q. Are you able to state whether all of the witnesses stated in answer to questions that they never had any agreement with anybody in respect to the entry or preemption of the lands in question, whether that was the general purport of all the testimony taken there that day; are you able to state that, as a matter of independent recollection?

(Objected to as immaterial and irrelevant, and particularly so far as it relates to any witnesses but Loren'z Johnson, and also on the ground that it would be merely heresay.)

A. My impression is not strong on that subject, but such as it is, is to that effect.

387 Q. You have had many years of experience as a reporter of testimony, have you not, Mr. Hillman?

A. I have.

Q. You had had at that time?
A. Yes.
Q. Were you at that time official reporter of Ramsey County?
A. I was.
Q. Having under your charge a large number of reporters?
A. Several.
Q. Doing all the reporting work in all the courts, in the first instance in this county, except the probate and justice courts?
A. All of the work of the district court.
Q. Yes; all the work of the district court. How long had you then been engaged in reporting testimony and reducing it to writing, making records and abstracts of testimony?
A. Nearly twenty-five years.
Q. Had you had, in your experience, to do with all kinds of witnesses—witnesses of all nationalities?
A. A large number of different nationalities and various types of witnesses.
Q. That was your business, to take testimony?
A. It was.
Q. Now, are you able to say that you substantially made an accurate report and statement of the testimony of those witnesses there that day?
A. That is my belief; that was what I tried to do.
Q. You did that to the best of your ability?
A. I did.
Q. You took this testimony upon a Remington typewriter?
A. I did.
Q. At that time you were an expert operator on the typewriter?
A. What might be so considered.
Q. You had then used the typewriter for many years?
A. I had.
Q. You wrote readily and rapidly at that time on the typewriter?
A. Fairly so.
Q. None of the testimony, as I understand, was taken in shorthand, but all of it on the typewriter?
A. My recollection is that where the questions were somewhat lengthy or where the answer was somewhat lengthy I took notes—shorthand notes—on a slip of paper before reducing it to a narrative form on the typewriter. Whether I did this in connection with the testimony of this particular witness I am now unable to testify.
Q. Did you preserve the shorthand notes which you so took?
A. I did not.
Q. They were merely jotted down on paper lying on the typewriter table to aid you in the slower process of writing it out on the typewriter?
A. Yes, sir.
388 Q. Are you sure you did not preserve those notes?
A. I am almost positive that I did not.
Q. Will you make an examination of your files and see if you can find those; and if so, let us know this afternoon or to-morrow?
A. I am so positive that I did not preserve them that I do not think it necessary to make the search.
Q. They were not taken in your regular reporting book?

A. They were not taken in my regular reporting book, but simply on a loose piece of paper lying, as suggested, in the typewriter table.

Redirect examination by Mr. SIMMONS:

Q. Now, I desire to ask you, Mr. Hillman, if when Mr. Lorenz Johnson was questioned as to the contents of the entry papers signed by him at the Willow River land office, such, for instance, as where he states in this deposition, "If the paper I signed stated that I never had made any other preemption and did not own 320 acres of land in any State or Territory, it was true," is it not a fact that the substance of that statement was incorporated into the question, and the answer was simply an affirmative?

A. My recollection is something to that effect.

Q. And so of the other questions relating to the same matters, is it not? That is, the first one, and then it goes on with similar other questions relating to the same matter.

A. I think so.

Ex. A 1. W. O. H.T

I, Peter Norell, do, upon my oath, declare that I am twenty-nine years of age; that I landed at New York on the fifteenth day of Sept., A. D. 1853, and that I have continued to reside in the United States ever since that time, and that it is my bona fide intention to become a citizen of the United States; and I hereby renounce all allegiance and fidelity to every foreign prince, potentate, State, or sovereignty whatever, and particularly all allegiance and fidelity to Oscar first, King of Sweden, of whom heretofore I have been a subject.

his
PETER x NORELL.
mark

Witness: SVEN LARSON.

389 Swo'n and subscribed before me this seventh day of August, A. D. 1854.

L. K. STANNARD,
Deputy Clerk of Dist. Court, Chisago Co., Mina. Ter'y.

Declaration of citizenship.

TERRITORY OF MINNESOTA, *County of Chisago:*

I, Peter Norell, do solemly swear that I will support the Constitution of the United States and the act of Congress organizing the Territorial government of Minnesota, so help me God.

his
PETER x NORELL.
mark.

Witness: SVEN LARSON.

Sworn to and subscribed before me, this seventh day of Aug., A. D. 1854.

L. K. STANNARD,
Deputy Clerk of District Court, Chisago Co., Minn.

TERRITORY OF MINNESOTA, *County of Chisago, ss:*

I, N. C. D. Taylor, clerk of dist. court, for the county aforesaid, by L. K. Stannard, deputy clerk, do hereby certify that the foregoing is a true copy of the original declaration of Peter Norell now on file in my office.

In testimony whereof I have hereunto set my hand and the seal of the court aforesaid at Taylor's Falls, this fourteenth day of October, in the year one thousand eight hundred and fifty-four.

N. C. D. TAYLOR, *Clerk.*
By L. K. STANNARD, *Deputy Clerk.*

(Endorsed:) "Received in letter of David Cooper, August 6th, 1855." Also endorsed in pencil: "Peter Norell, Aug. 7th, 1854. Citizenship."

390 EXHIBIT A2 W. O. H.—*Answer in Gagnelius et al.* v. *Stinson.*

Circuit court of the United States for the western district of Wisconsin.

J. E. GAGNELIUS AND JOHN OGREN, PLAINTIFF,
vs.
JAMES STINSON, DEFENDANT.

The answer of the defendant, James Stinson, to the complaint of J. E. Gagnelius and John Ogren, plaintiffs.

This defendant denies that the plaintiffs were at the commencement of this action, now are or ever have been, the owners in fee simple, or otherwise, or entitled to the immediate or other possession of the lands described in the complaint, to wit, the southwest quarter of section twenty-eight, township forty-nine north, of range fourteen west, in Douglas County, Wisconsin. He denies that Andreas Svenson ever conveyed the said lands, or any part thereof, to the plaintiffs, and denies any knowledge or information sufficient to form a belief whether the said Andreas Svenson executed any deed to said plaintiffs, as alleged in the complaint, or otherwise. Defendant denies that at the time or times mentioned in said complaint the said Andreas Svenson was the owner of or had any interest in, or was entitled to the possession of, the real property described in the complaint, and herein described, but alleges that this defendant claims title thereto under the said Andreas Svenson, which title accrued prior to the conveyance thereof, if any, made by the said Svenson to the plaintiffs.

Defendant admits that the plaintiffs were at the time of the commencement of this action, and for more than five years theretofore were and still are residents and citizens of the State of Minnesota, and that the said Andreas Svenson was up to the time of his death, which defendant alleges occurred after the commencement of this action, and had been at all times since the year 1853, a resident and citizen in the Territory and State of Minnesota, and admits that neither of the plaintiffs nor the said Andreas Svenson ever were residents or citizens of the State of Wisconsin.

Defendant denies that he did at the time of the commencement of this action, or does now or ever did, wrongfully or unlawfully withhold the possession of said real estate from the plaintiffs in this suit.

391 Defendant admits that he was at the commencement of this action and is now a resident and citizen of the State of Illinois.

Defendant denies that the plaintiffs have been damaged, by the wrongful detention of said property or otherwise, in the sum of one thousand dollars, or in any other sum.

For a further and separate defense to this action the defendant alleges that neither the plaintiffs nor the said Andreas Svenson, under whom they claim, were seized or possessed of the premises in question, described in the complaint, within twenty years before the commencement of this action, and in that behalf he pleads the limitation of section 4207 of the revised statutes of this State.

For a further and separate defense defendant alleges that the taxes duly and lawfully levied and assessed by the proper authorities upon and against the said southwest quarter of section twenty-eight for and during the year 1876 were not paid by the said Andreas Svenson, or by any other person, and that such land was duly and lawfully sold for the nonpayment of said taxes by the county treasurer of said Douglas County, on or about the 1st day of September, A. D. 1877, to the said Douglas County, and the usual certificate of sale was issued and delivered to the said Douglas County; that the said lands were not redeemed from the said sale, and, the same remaining wholly unredeemed, the said State of Wisconsin and Douglas County did by their tax deed, duly executed and acknowledged and delivered, bearing date on the 2nd day of September, A. D. 1880, grant, bargain, sell, and convey to said Douglas County the said lands above described, together with other lands; and said tax deed so executed and delivered was fair and regular upon its face, and was duly recorded in the office of the register of deeds of said Douglas County on said September 2, 1880, in book 3 of tax deeds, on page 76 and succeeding pages, and that the said lands so granted and conveyed were at the time of the making and recording of said tax deed, and for many years prior thereto, and for more than three years thereafter, to wit, for the space of about ten years thereafter, vacant and unoccupied, and so remained, and this defendant pleads in that behalf the limitations of sections 1187 and 1188 of the revised statutes, and the acts amendatory thereof, in bar of this action. Defendant further alleges that the acknowledgment of the said tax deed was deemed to be defective, in that the words "to me known" were omitted from such acknowledgment, but in reality the same was not defective, for the reason that the officer taking such acknowledgment was a subscribing witness to the said deed whereby the said supposed defect was supplied; but the officers of Douglas County, deeming that such omission constituted a defect in the said deed, on or about the 12th day of July, A. D. 1882, caused said deed to be reacknowledged, and
392 the county clerk of said county did then and there again acknowledge the same, and thereupon the said deed was duly recorded in said office of the register of deeds on said July 12, 1882, in book 3 of tax deeds, on page 125, and that the said lands so conveyed by said tax deed were at the time of said second record of said deed, and for more than three years thereafter, to wit, for about eight years thereafter, vacant and unoccupied, and so remained; and defendant pleads in that behalf the limitations of said sections 1187 and 1188.

This defendant further alleges that prior to the 20th day of June, A. D. 1881, the board of supervisors of said Douglas County duly and lawfully authorized George F. Holcomb, the county clerk of said county, to sell

and convey, by a proper deed of conveyance, the said lands above described, and thereafter, and on or about the said 20th day of June, 1881, the said county of Douglas, in and by its deed dated on that day, duly executed in its behalf by said George F. Holcomb, as county clerk aforesaid, did grant, bargain, sell, and convey unto this defendant, for the consideration of nineteen hundred and seventy-eight dollars and fifty-seven cents, to be paid by him, the lands hereinbefore described, together with other lands, and the said deed was thereafter recorded in the said office of the register of deeds on the 28th day of October, 1884, in volume 3 of tax deeds, on pages 270 and following; and that by virtue of the said tax deed, resolution and deed of bargain and sale as aforesaid, and the operation of the statute of limitations of this State under the said tax deed, this defendant became and was, and still is, the absolute owner in fee simple of the lands above described.

This defendant, further answering, alleges that the said Andreas Svenson, the original owner of said lands, and under whom the said plaintiffs claim title, for the period of four years next preceding the first recording of the said tax deed, and for four years next preceding the second recording of said tax deed, failed and neglected to pay all the taxes levied and assessed against said lands, and that the grantee in said tax deed, and this defendant claiming under it, has for the period of three years from and after the date of the first recording of said tax deed, and from and after the date of the second recording of said tax deed, paid and redeemed all the taxes levied and assessed against the said lands; and that the said Andreas Svenson did not within nine months from and after the passage and publication of chapter 133 of the laws of Wisconsin for the year 1885 bring any action in respect to said lands against this defendant or otherwise; and in that behalf this defendant pleads the limitation of said chapter 133 of the laws of 1885.

393 Wherefore, the defendant prays that the said complaint may be dismissed, with costs.

SPOONER, SANBORN & KERR,
Defendants' Attorneys.

STATE OF WISCONSIN,
Dane County, ss:

A. L. Sanborn, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action; that all the material allegation of the answer are within the personal knowledge of this deponent as such attorney; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that the knowledge of this deponent is derived from an examination of the records of said Douglas County, in the office of the register of deeds of said county, and an abstract of title of the said lands and original deeds thereof held by this deponent as such attorney, and the grounds of deponent's belief are the said records, abstract, and conveyances, and the reason why this affidavit of verification is not made by the defendant is, that he is not a resident of this State, and is not within this county, to the best of deponent's knowledge and belief.

A. L. SANBORN.

Subscribed and sworn to before me this 13th day of July, A. D. 1893.

H. C. REED,
Notary Public, Dane County, Wis.

(Endorsed:) U. S. circuit court, west. dist. of Wisconsin. J. E. Gagnelius and John Ogren v. James Stinson. Answer. Copy. Exhibit A2 W. O. H.

EXHIBIT A3. W. O H.—*Notice, subpœna, and deposition.*

United States of America, for the western district of Wisconsin.

J. E. GAGNELIUS AND JOHN OGREEN,
vs.
JAMES STINSON.

Please take notice that the testimony of Otto Walmark, Lorentz Johnson, Peter Norell, Gustaf Johnson, Andrew Walmark, Israel Johnson, and
394 Svenson (widow of Andreas Svenson, deceased), witnesses on the part of the plaintiffs in the above-entitled cause, will be taken by deposition *de bene esse*, by and before George N. Hillman, a notary public, or by and before Charles N. Akers, a notary public, or some other duly qualified officer, at the public hall in the village of Chisago City, in the county of Chisago and State of Minnesota, on the 19th day of July, A. D. 1893, at 11 o'clock in the forenoon, and continuing from day to day until such testimony shall have been taken; at which time and place you are hereby notified to appear and put such interrogatories as you may think fit.

Such depositions will be so taken for the reason that the said witnesses live at a greater distance than one hundred miles from the place of trial of this suit.

July 10th, 1893.

FAYETTE MARSH and
BASHFORD & DISNEY,
Attorneys for Plaintiffs

R. M. BASHFORD,
Of Counsel.

To Messrs. Spooner, Sanborn & Kerr, attorneys for defendant.

United States circuit court, district of Minnesota.

The President of the United States of America to Otto Walmark, Lorentz Johnson, Peter Norell, Gustaf Johnson, Andrew Walmark, Israel Johnson, and Helena Svenson, wife of Andreas Svenson, deceased, greeting:

You are hereby commanded to be and appear, without excuse or delay, before George H. Hillman, Charles N. Akers, or one of them, at the public hall in the village of Chisago City, in the county of Chisago, and State of Minnesota, on the 19th day of July, A. D. 1893, at eleven o'clock in the forenoon, then and there to testify and the truth to speak, in a certain matter of controversy in the circuit court of the United States for the western district of Wisconsin, wherein J. E. Gagnelius and

John Ogreen are plaintiffs, and James Stinson is defendant, on the part of said plaintiffs; and hereof fail not.

The marshal of said district of Minnesota will serve this writ upon the persons herein named, and make due return thereof.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of July, A. D. 1893.

395 Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS,
Clerk of said Circuit Court.
By LOUISE B. TOOTT,
Deputy Clerk.

FAYETTE MARSH and
BASHFORD & DISNEY,
Plaintiff's Attorneys.

R. M. BASHFORD,
R. M. BASHFORD,
Of Counsel.

(Return on subpœna.)

UNITED STATES OF AMERICA,
District of Minnesota:

I hereby certify and return that I served the annexed subpœna on the therein-named persons by delivering to and leaving a true and correct copy thereof with each of them, and paying them their legal fees personally in Chisago County, in said district, on the 18th of July, 1893.

J. C. DONOHOUER, *U. S. Marshal.*
By E. W. GOODNER, *Deputy.*

Circuit court of the United States, for the western district of Wisconsin.

J. E. GAGNELIUS AND JOHN OGREEN
vs.
JAMES STINSON.

Testimony of Helena Svenson Ogreen, Otto Walmark, and other witnesses produced and sworn before me, Geo. N. Hillman, a notary public of the State of Minnesota, at the village of Chisago City, Chisago County, and State of Minnesota, on the 19th day of July, A. D. 1893, commencing at 11 o'clock a. m., pursuant to the notice and subpœna hereto attached.

DISTRICT OF MINNESOTA, *ss:*

Lorentz Johnson, being duly sworn through Otto Wallmark, interpreter, on examination by R. M. Bashford, deposes and says as follows:

396 My name is Lorentz Johnson. I am seventy-two years of age. I was born in Sweden. I have lived in this country forty years; came here in 1853. Since I came to this country I have lived in Chisago

County, Minnesota. My business is farming. I am not able to speak English, so that my testimony has to be taken through an interpreter. I knew Andreas Swenson in his lifetime; came over with him in the same ship. He sometimes went by the name of Andreas Ogreen; there were so many here by the name of Swenson that he assumed the name Ogreen in order to get his letters; there were several of his relatives by the name of Ogreen. I knew Andreas Swenson in Sweden. We settled near together when we came to Minnesota, and I continued my acquaintance with him here. Soon after coming to this country I went with him to Superior, Wis. I think there were about fourteen of us went together. We went up there to work by the month. We worked in Superior cleaning streets, and then Mr. Stinson took us out, one at a time, on the land. I know that Andreas Swenson took up some land. I know that he cleared some land and built a shanty upon it. I took up land there myself. I could not say how far distant Swenson's land was from mine.

And the said witness, upon cross-examination by A. L. Sanborn, deposes as follows:

I can name some of the men that went up to Superior with me. One was John Johnson, another Andreas Swenson, Peter Norell, John Londquist—but at that time he went by the name of John Johnson, second—Johannas Helin, Peter Nelson, Matthias Larson, and Sven Larson, Sven Magnuson, a man by the name of Ahlstrom, Nils Berg. I can not recollect any more. Peter Nelson is dead; John Johnson is dead also; Johannas Helin is dead also; Matthias and Sven Larson are both dead; Ahlstrom is also dead. I know that some of these men whom I have mentioned took up land and built a shanty the same as Swenson.

Q. Did you go on some land to enter or preempt it?

Objected to as incompetent, irrelevant, and immaterial. And it is stipulated between the counsel for the parties that the further cross-examination of this witness shall be taken subject to the same objection.

A. Yes. I took up land and built a shanty on it. I can recollect that we changed work and slept in each other's shanties; can recollect that I slept in my shanty one night anyway, but can't recollect particularly; it is over forty years ago. I can recollect that I cleared a piece of land about the shanty. The roof of the shanty was covered with some brush and poles; there was an opening for a door, but can't recollect whether it was made to be locked and unlocked. I recollect going down to the land office at Hudson or Willow River and signing
397 a paper before the land officers, in order to prove up on the land that I had entered. If the paper I signed stated that I never had made any other preemption, and did not own 320 acres of land in any State or Territory, it was true. I never had made any other preemption, and did not own any other land at all. If it was contained in the paper that I did not enter upon the land to sell it on speculation, but to devote it to my own use, it was true. I did not enter it to sell on speculation, but to devote it to my own use. If the paper stated that I had not prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I might acquire from the Government of the United States should inure in whole or in part for the benefit of any person except myself, it was true. I had made no contract or bargain to sell

to any person or for any person the said land or any part of it. I had not at any time made, and did not make, any agreement or understanding with James Stinson or any other person that the entry and improvement upon said land was for the benefit of said Stinson or any other person except myself. I can not recollect whether I paid any money for the entry or for the land.

Counsel for the plaintiffs renews his objection to the testimony of this witness on cross-examination and moves to strike out the same and the whole thereof as incompetent, irrelevant, and immaterial.

his
LORENTZ x JOHNSON.
mark

Subscribed and sworn to before me this 19th day of July, 1893.

[SEAL.] GEO. N. HILLMAN,
Notary Public, Minn.

UNITED STATES OF AMERICA,
State of Minnesota, County of Chisago, District of Minnesota, ss:

I, Geo. N. Millman, a notary public of said State of Minnesota, do hereby certify that on the 19th day of July, A. D. 1893, personally appeared before me Helena Svenson Ogreen, Otto Wallmark, Lorentz Johnson, Peter Norell, Gustaf Johnson, Andrew Wallmark, and Israel Johnson, pursuant to the notice and subpœna hereto attached, at the house of Otto Wallmark, in the village of Chisago City, Cisago County, Minnesota; that I was then and there attended by R. M. Bashford, esq., counsel for the plaintiffs above named, and by A. L. Sanborn,
398 esq., one of the attorneys for the defendant above named; that the said witnesses, and each of them, respectively, were then and there, before giving any testimony, duly and publicly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth relative to said cause; that the testimony of said witnesses was then and there reduced to writing by me and was then read over to each of said witnesses respectively and then signed by each of them respectively; that I am not of counsel or attorney for either of the parties to this suit, and am not interested in the event thereof; that the said depositions were retained by me for the purpose of transmission to the clerk of the circuit court of the United States for the western district of Wisconsin, where the said cause is pending, and the said depositions are now herewith returned by me to said clerk under seal.

Dated, July 19, 1893.

GEO. N. HILLMAN,
Notary Public, Minn.

Fee, $10, paid by pltffs' attys.

(Endorsed:) Exhibit A3. Circuit court of United States for western district of Wisconsin. J. E. Gagnelius and John Ogreen, plaintiffs, vs. James Stinson, defendant. Deposition of Loreantz Johnson. John B. Simmons, asst. counsel for plaintiff, Racine, Wis. (Copy.)

Certificate of notary.

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Fred W. Goeswisch, a notary public in and for Ramsey County, State of Mianesota, do hereby certify that on the 25th day of October, A. D. 1899, I took the foregoing depositions of George N. Hillman and Peter Norell in continuation of their depositions taken before me on the 12th and 13th days of June, A. D. 1899, at the county court-house in the city of St. Paul, in Ramsey County, in the district of Minnesota; that at the taking of said continuation of the depositions of said witnesses I was attended by John B. Simmons, counsel for the complainant,
399 and by Arthur L. Sanborn, solicitor for the defendants; that the said witnesses were carefully examined; that the reading over and signature of the witnesses to their said depositions so taken in continuation of their depositions previously given by them, was waived by the stipulation of parties.

That said depositions were taken down in shorthand by W. O. Hillman, a stenographer, who was in nowise interested in said action, and afterward extended by him upon the typewriter; that it was stipulated between the parties that the depositions so taken might be used upon the trial with like force and effect as if originally taken down in longhand and afterward read over and subscribed by the witnesses; that it was also stipulated between the parties that any objections to the evidence of the witnesses of questions propounded to them, except objections based on the form of the questions or the objection that the evidence was not the best evidence, might be taken upon the trial with like force and effect as if formally interposed at the time of taking the same.

That I am not and never have been attorney or of counsel for any or either of the parties, and that I have sealed up the said depositions for the purpose of returning them to F. W. Oakley, clerk of the circuit court of the United States for the western district of Wisconsin, at Madison, Wisconsin, and have retained them in my possession for that purpose and until the same were by me deposited in the post-office to be sent to said clerk through the mails.

[L. S.] FRED W. GOSEWISCH,
Notary Public, Ramsey County, Minnesota.

Witness fees, $——; notary's fees, $9.60; total, $9.60.

(Paid by counsel for complainant.)

(Endorsed:) Filed Nov. 2, 1899. F. W. Oakley, clerk.

On same day, to wit, November 2, 1899, filed depositions of Levi W. Folsom and John Shaleen, taken before Fred W. Goeswisch at St. Paul, Minn., Oct. 25th and 26th, 1899, as follows:

Subpœna served on John Shalen and Levi W. Folsom.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed subpœna on the therein-named defendant, John Shalen by sending a true copy thereof to him at his office in Center City in said district, on the 24 day of Oct., A. D. 1899.

WM. H. GRIMSHAW, *U. S. Marshal.*
By C. A. NIMOCKS, *Deputy.*

400 UNITED STATES OF AMERICA,
District of Minnesota.

I hereby certify and return that I served the annexed subpœna on the therein-named Levi W. Folsom, by handling to and leaving a true and correct copy thereof with him personally at Taylors Falls in said district on the 23 day of , A. D. 1899.

WM. H. GRIMSHAW, *U. S. Marshal.*
By C. A. NIMOCKS, *Deputy.*

49 miles 6, $2.94; fees, .50; 3.44.

United States circuit court, district of Minnesota, third division.

The President of the United States of America to Hon. John Shalen and Levi W. Folsom, greeting:

You are hereby commanded to be and appear, without excuse or delay, before Fred W. Gosewisch, esq., a notary public, in and for the district of Minnesota, at the office of the judge of probate, at St. Paul, Minnesota, on the 25th day of October, A. D. 1899, at 2 o'clock p. m., then and there to testify and the truth to say, in a certain manner of controversy in the U. S. circuit court, for the western district of Wisconsin, depending between the United States of America, plaintiff, and James Stinson et al., defendants, on the part of the said plaintiff hereto fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of September, in the year A. D. 1899.

Issued at my office in the city of St. Paul under the seal of said circuit court, the day and year last aforesaid.

[L. S.] HENRY D. LANG,
Clerk of said circuit court.

D. F. JONES, *U. S. Attorney,*
Per JOHN B. SIMMONS, *Special Asst.*

401 *Testimony of Levi W. Folsom.*

United States circuit court, western district of Wisconsin.

THE UNITED STATES OF AMERICA,
Western District of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Depositions of Levi W. Folsom and John Shaleen, taken before the undersigned, Fred W. Gosewich, a notary public in and for Ramsey County, State of Minnesota, at the county court building in the city of St. Paul, in said county of Ramsey, State of Minnesota, on the 25th and 26th days of October, A. D. 1899.

John B. Simmons appearing for complainant.

A. L. Sanborn appearing for defendants.

Stipulated by and between the attorneys for the respective parties above named, before the examination of said witness that said depositions may be taken down in shorthand by Geo. N. Hillman, a stenographer, and afterward extended upon the typewriter, and the subsequent reading of the depositions of the witnesses and the signatures of the witnesses is hereby waived, and said depositions, when so taken and extended on the typewriter and certified by the notary may be used upon the trial of this action with the same force and effect as if originally taken down in longhand by the notary and thereafter read over to or by the witnesses and subscribed by such witnesses.

Stipulated also that any and all objections to the testimony of said deponents or to questions propounded to said deponents, except objections going to the form of the questions or on the ground that the evidence is not the best evidence, may be raised at the trial with the same force and effect as if formerly interposed at the taking of the depositions.

LEVI W. FOLSOM, sworn on behalf of the plaintiff, testified:

Q. (By Mr. Simmons.) What is your full name, Mr. Folsom?

A. Levi W. Folsom.

Q. What is your age?

A. I was seventy-eight the 25th of last Septem'er.

Q. Where do you reside?

A. At Taylor's Falls.

Q. In Chisago County, Minnesota?

A. Yes, sir.

402

403 Q. How long have you lived there?

A. I came there first in 1852, but I have been there ever since the fall of 1854.

Q. What has been your business?

A. I was in the practice of law for about thirty years and something more, and since that I have been in the land business, taking care of my property, etc.

Q. Do you hold any position, and if so, what, in connection with any railroad in this locality?

A. Well, I am a director on our road that runs into Taylor's Falls and Duluth; have been connected with it ever since it was built; was president of it when it was built.

Q. Were you a notary public of Chisago County, Minnesota, in the year 1856?

A. I was.

Q. And were you then and are you now acquainted with Peter Norell, whose residence is in the town of Fish Lake, Chisago County?

A. I have known him a good many years. I have known him a long time, though I don't remember often seeing him.

Q. Do you know James Stinson, one of the defendants in this action?

A. I do.

Q. Were you employed by him in the month of June, 1856, to take acknowledgments of certain deeds of residents of Chisago County?

A. I judge that was the time by this deed. I don't recollect exactly the time, only from this deed. This deed states that it was in June.

Q. Among others, did you take the acknowledgment of a deed for Mr. Stinson of this man Peter Norell and his wife?

A. I did.

Q. Will you examine the paper which is now shown you [showing witness Ex. A-4], and state whether or not that is the deed which you just referred to?

A. That is my signature—no question about that. Of course I know nothing about the deed, what it was, any further than the signing and my acknowledgment. I didn't read the deed, knew nothing about the circumstances, only I know that the parties signed this in my presence and I know that this is my handwriting filling it out.

Q. Is the body of the deed filled out in your handwriting?

A. No, sir; I had nothing to do with the body of the deed.

Q. Do you know who did fill out the body of the deed?

A. Don't know anything about it, sir.

Q. Was it brought to you already filled out?

A. It was.

Q. By whom?

A. Mr. Stinson had it there when we reached the house where this acknowledgment was taken.

Q. You went to Mr. Norell's house, did you, at Centre City?

A. I can't recollect for certain where it was that this deed was
404 signed. It is a good while ago, and such things slip a man's memory. I was taking acknowledgments of a great many deeds at that time. I couldn't say where it was; it is my impression it was at Centre City somewhere. And this Sam Cochran signed—I think Sam Cochran had a little store there.

Q. Where did Otto Walmark, the other witness, reside?

A. Otto Walmark resided there or at Chisago City. I guess he was there at Centre City at that time; he was around there, he and his brother, both.

Q. Are the signatures "Peter Norell" and "Bretta Anderita Norell" attached to that deed the signatures of Peter Norell and his wife, and were they signed by them in your presence?

A. I know this is my handwriting and it says that they were. I can't recollect anything about it any farther than the deed says so, and I am satisfied that what I wrote here was correct.

Q. Well, do you have a recollection of going to this Mr. Norell's with Mr. Stinson and taking an acknowledgment?

A. Why, I took ten or twelve, and I have no recollection particularly, but I am satisfied that this deed was signed by them. This is my handwriting, sure. I would not hesitate to swear that they signed that deed, and that they signed it according to the filling out here—the way it is filled out here.

Q. Did they acknowledge the execution of the deed before you, as stated in your certificate?

A. They did.

Q. Was there any objection made by Norell or his wife to the signing of that deed?

A. I have no recollection that any one of the parties that we went to objected. They were all ready to sign; I don't think there was a word said. They seemed as anxious to sign as Stinson was to have them sign.

Q. Do you know whether or not any money was paid to either Mr. Norell or his wife on that occasion?

A. I couldn't swear whether there was or not.

Q. Are you acquainted with Otto Walmark, one of the witnesses to that deed?

A. Yes, sir; I know him well.

Q. He is of Swedish descent, I believe, is he?

A. Scandinavian; yes, sir.

Q. And did he understand both the English and Swedish languages at the time this deed was executed?

A. I am inclined to think he did. He was well educated in Sweden before he came here, and he has always talked the English language, as long ago as I can recollect, well. No one would know he was a Swede to talk with him—a well-educated man; a man that has held high office there—county auditor, I guess, for twenty-odd years. He has been in the State senate. His brother Andrew has been register of deeds for a long time.

Q. Where is the other witness to that instrument, Mr. S. R. Cochran?

A. I don't know where he is.

Q. You remember him, do you, Mr. Folsom?

A. I recollect the name Sam Cochran a long, long time ago, and of course I can't recollect exactly about the parties that signed here as witnesses—it is too long ago for me to recollect—but I have made inquiry with regard to him of old people, and they say Sam Cochran (that was S. R. Cochran) lived at Centre City, and that he sold his place years and years ago to Andrew Holm and went away. Where he went I don't know.

Mr. SIMMONS. We desire to offer this deed in evidence.

(The deed was marked Ex. A-4. W. O. H.)

Mr. SANBORN. It is understood that counsel for the defendants will produce this deed upon the hearing, and that it will be properly offered in evidence in its proper connection.

(Complainant's counsel also offers a previous deed, executed by Peter Norell to the defendant James Stinson, bearing date the 24th day of October, 1854, which deed is marked Ex. A-5 W. O. H.)

Mr. SANBORN. Defendants' counsel will produce this deed also.

Q. Were you acquainted with Peter Shaleen, who was formerly clerk of the district court of Chisago County?

A. Yes, sir; I was.

Q. How long have you been acquainted with him?

A. Well, I should say forty years, at least. It is a long time. Maybe more than that.

Q. Were you familiar with his signature?

A. I used to see it frequently. He is dead now.

Q. When did he die?

A. Well, I would have to guess at it; a couple of years ago, I should think.

Q. How long, if you know, was he clerk of the district court?

A. Well, really, I couldn't tell the length of time; it was a long time.

Q. For a good many years, was he?

A. Yes, sir; I should think he was in fifteen or twenty years. Well, I don't know, I don't recollect how long; it was a long time, anyway.

Q. Did he hold any other office that you know of in the State
406 of Minnesota?

A. I don't know whether he did or not. He has been one of our prominent citizens there for years and years. It is guesswork as to the length of time he has been in; I couldn't tell exactly, but I know it has been a long time that the same men have been right in office there, and he was one of them—the Walmarks and the Shaleens and the Stalbergs.

Q. I want to show you, Mr. Folsom, what purports to be an affidavit signed by Peter Norell and purporting to be sworn to before Peter Shaleen, and will ask you to note particularly the signature of P. Shaleen to the jurat, and also to the certificate which follows the affidavit, and ask you if that is the genuine signature of Mr. Peter Shaleen, who was clerk of the district court?

A. I should think it was.

(The paper shown witness was marked for identification "Ex. A-6 W. O. H.")

Q. You may state whether or not Mr. Peter Shaleen was acquainted with the Swedish language.

A I think he was.

Q. How well acquainted?

A. Of course I did not understand the Swedish language myself, but I always understood that the Shaleens and Wallmarks were the best-educated Swedes we had in their own country; and they took right hold of our language very readily and became adepts at talking our language, and either of them could speak as well as any of us—at an early age, too, a long time ago.

Q. So that at the time this affidavit purports to be executed—in November, 1887—Mr. Peter Shaleen was very familiar with both the Swedish and English languages——

A. Certainly.

Q. ——as you understood?
A. I so understood it.
Q. Do you know what Mr. Peter Shaleen's reputation was as a man of integrity, and also as to his efficiency and accuracy as a public officer?
(Objected to as incompetent, irrelevant, and immaterial.)
A. I don't know of a man that was more efficient and more accurate than he was, among his people or among any of us
Q. And what was his reputation as to being a man of integrity and a man of trustworthiness?
(Same objection.)
A. Supposed to stand well. A good church member and supposed to stand well in our community.
Q. Do you know this man Bush, whose name is signed to that affidavit as a witness—Charles H. Bush?
A. Certainly.
Q. Is he still living?
A. No, sir; he is dead.
Q. How long has he been dead?
A. Well, now, I should say three or four years, but I would
407 defer to my friend here, Mr. Stalberg. He knows all about it. I can't tell exactly; he has been dead some time—I should say a couple or three years.
Q. Where did he live?
A. Why, he made his home at Wyoming; his father lived at Wyoming or near there. He held the county auditor's office and of course made his home there at Centre City while he was there.

Cross-examination by Mr. SANBORN:

Q. Mr. Folsom, do you know Andrew Wallmark?
A. Yes, sir.
Q. You have known him many years?
A. Yes, sir.
Q. Is he quite an old man?
A. I should think he was pretty near eighty, somewhere in that vicinity.
Q. Do you know whether he has been out of health for the last two or three years?
A. I know he has. I have not seen him for two or three years, but people have told me that he was out of health.
Q. He lives at Chisago City?
A. Near Chisago City.
Q. And you live at Taylor's Falls?
A. Yes, sir.
Q. And how many miles between Chisago City and Taylor's Falls?
A. I should say about twelve miles.
Q. Railroad connection between the two places?
A. Well, between Chisago City and Taylor's Falls there is.
Q. Well, he lives within a short distance——
A. About twelve miles, I should think, from Taylor's Falls.
Q. How far does he live from Chisago City?
A. He lives about a mile and a half, I think. It has been a good many years since I was there, but I should think it was about that.

Q. What has been his business of late years—a farmer?

A. He lives on a farm since he retired. He was register of deeds for a long time.

Q. He was register of deeds of Chisago County for many years?

A. For a great many years; yes. Since he retired from that office he has lived on his farm; I have not seen much of him since.

Q. Is he a brother of Otto Wallmark?

A. Yes, sir; a brother.

Q. Shaleen was a Swede?

A. Yes, sir.

Q. And the Wallmarks, of course, are Swedes?

A. Yes.

408 Q. You never saw this affidavit which Mr. Simmons called your attention to, certified to by Mr. Shaleen, before to-day?

A. No.

Q. Never heard of it before?

A. No, sir; I don't know what it is now.

JOHN SHALEEN, sworn on behalf of the complainant, testified:

By Mr. SIMMONS:

Q. Your full name is John Shaleen?

A. That is my full name.

Q. And where do you live?

A. I live in Chisago County near Lindstrom.

Q. Do you at present hold any official position in Chisago County?

A. Yes, sir; I hold the office of judge of probate.

Q. How long have you occupied that position?

A. Since 1888.

Q. Did you know and were you in any way related to Peter Shaleen?

A. Yes, sir; I am his brother.

Q. Is Peter Shaleen now living?

A. No, sir.

Q. When did he die?

A. He died in February, 1897—I think it was; I have forgotten the date in February, but it was in that month.

Q. Did Peter Shaleen in his lifetime hold any official position in Chisago County?

A. Yes, sir; he held the office of clerk of the district court from, I think, in either 1879 or 1881 up to his death, besides various local offices.

Q. Was your brother, Peter Shaleen, a native of Sweden?

A. Yes, sir.

Q. Was he educated in Sweden?

A. Yes, sir; organist and school teacher.

Q. He was, of course, then, very familiar with the Swedish language when he came over here?

A. Yes, sir.

Q. How was it in regard to the English language? Did he become familiar with that prior to the year 1887?

A. Yes, sir. He prepared himself for the trade of school teaching in this country, and taught school several terms before he became clerk of the district court.

409 Q. And when you speak of teaching schools in this country you mean English schools, do you?

A. Yes; English district schools.

Q. I now show you, Judge, a paper which purports to be an affidavit of one Peter Norell, being the same document which has been exhibited to Peter Norell himself and marked for identification Complainant's Ex. A-1, and also exhibited to the witness Levi W. Folsom and marked Ex. A-6, and I desire to ask you if you recognize the signature to the jurat and certificate and also the signature as a witness to that affidavit of your brother, Peter Shaleen?

A. I do.

Q. Those three signatures are his genuine signatures, are they?

A. To my best impression, they are.

Q. And were you familiar with his handwriting and his signature?

A. Yes, sir.

Q. Were you familiar with the signature of the witness Charles H. Bush——

A. Yes.

Q. Which appears upon that affidavit?

A. I feel positive that is his signature.

Q. Where did this witness, Charles H. Bush, reside in 1887?

A. He resided then at Centre City. He was then the county treasurer of our county and had been for a number of years.

Q. Is he now alive?

A. No, sir; he is dead.

Q. About how long since he died?

A. Well, I think he died in 1896, or something about that.

Q. Do you know what the reputation of your brother Peter Shaleen was in the community here as to honesty and trustworthiness?

A. Yes, sir.

Q. What was it?

(Objected to as incompetent, irrelevant, and immaterial.)

A. Well, his reputation was good, and this without being called my relation.

Q. And do you know what his reputation was as to being careful and painstaking in the matter of taking and explaining business or legal documents such as this affidavit of Peter Norell's?

(Same objection.)

A. I think he was noted to be careful in his official duties, so far as I ever heard; I never heard anything to the contrary.

Q. Was he in your opinion thoroughly competent to read and explain an affidavit such as this one to a countryman?

(Same objection.)

A. In my estimation he was.

410 Mr. SIMMONS. We offer in evidence this affidavit, in connection with the testimony of the witness.

Mr. SANBORN. The offer of the document is objected to as incompetent, irrelevant, and immaterial.

(Agreed that a copy be attached to this deposition, the original to be produced upon the trial.)

Cross-examination by Mr. SANBORN:

Q. Judge, this affidavit seems to be attached to quite a number of other papers—please look them through—some of which appear to be in the same hand. Referring to the body of the affidavit as the one you have testified to, do you know anything about the transaction of procuring those affidavits?

A. Not a particle; no.

Q. You never have heard anything about the——

A. Oh, I might have heard of the Stinson case, but never of the parties that was interested.

Q. Well, did you hear about a man by the name of Streeter coming down to Chisago County and procuring affidavits?

A. No, sir; I never heard of that.

Q. You never met Streeter?

A. No, sir.

Q. Did you ever hear your brother say anything about this transaction?

A. Not a word, to my best remembrance.

Q. Judge, are you acquainted with Otto Wallmark and Andrew Wallmark?

A. Yes, sir.

Q. How long have you been acquainted with them?

A. Since 1855.

Q. They are Swedes?

A. Yes, sir.

Q. Andrew Wallmark was register of deeds of Chisago County for some time?

Mr. SIMMONS. I object to all this testimony in regard to the time and to Andrew Wallmark as incompetent, irrelevant, immaterial, and not cross-examination.

A. I think for twenty years; nineteen or twenty years, somewhere about that.

411 Q. And Otto Wallmark was county auditor?

A. He was county auditor for nineteen years.

Q. And what other office?

A. State senator.

Q. State whether or not Andrew and Otto Wallmark are men of good character.

(Same objection.)

A. The highest standard of character—character above reproach.

Q. Is Andrew Wallmark quite an old man?

A. Yes; he is quite old.

Q. Is he out of health or what is the matter with him, if anything?

A. I don't think he is out of health, but he is aged; so much so that I think his memory is somewhat impaired; I know his hearing and eyesight are, and his general appearance is that of age.

Q. How long has he been in this condition; how long has it been coming on?

A. Well, I would say that anyway for three years he has been aging right along.

Q. Again calling your attention to Exhibit A-6, which has to-day been offered in evidence, purporting to be an affidavit of Peter Norell, I will ask you in whose hand the body of the affidavit is written.

A. I don't know. I haven't got the least recognition of it.

Q. Examine the body of the affidavit and the certificate and state whether your brother's hand appears anywhere in it.

A. My brother's hand appears to the jurat and as a witness.

Q. Not in the body of the affidavit?

A. No, sir.

Q. Nor in the certificate appended after your brother's first signature?

A. No; that is not his handwriting.

Mr. SIMMONS. You mean the body of the certificate? It is his signature at the bottom of the certificate.

WITNESS. Well, what I recognize is this, and also here and also here.

Q. And all the rest of the affidavit, except your brother's attestation and his signature to the affidavit and his signature to the jurat or certificate at the bottom, are in the handwriting of other persons?

A. Somebody else's handwriting which I don't know.

412 Redirect examination by Mr. SIMMONS:

Q. You refer to Andrew Wallmark's condition as being impaired physically and mentally?

A. Well, I think his memory is impaired; and physically—I know that his hearing is very much impaired and his eyesight is impaired and he is perceptibly aging.

Q. To such an extent that it would be very difficult to get his testimony as to transactions which happened forty-five or more years ago?

A. Well, really, I couldn't tell whether—scenes like that, of early days, are sometimes engraved on the tablet of a man's mind where incidents later than that would be obliterated, so I couldn't tell in this case whether it would or not.

Q. As to ordinary things you think it would be difficult for him to give——

A. Well, it may not be difficult but yet, not as sure as where he was in his young days. It may, by refreshing memory, be all right so far as I know, but the signs show that he is aging.

Q. Do you know his signature?

A. Yes; I noticed it in one place here.

Q. You saw his signature to one of the affidavits to which Mr. Sanborn, counsel for the defendants, called your attention, did you?

A. Yes. Well, I saw it in one of these papers here, I think.

Q. Attached to an affidavit?

A. Well, I didn't notice what it was attached to; it was somewheres here [examining papers]. There it is; I recognize that.

Q. Now, after examination, will you state whether it is attached to one of the affidavits to which counsel called your attention?

(Objected to as incompetent, immaterial, and improper.)

A. Yes; this must be an affidavit.

(Complainant's counsel offers in evidence certified copy of declaration of intention to become a citizen of the United States made by Sven Larson August 8th, 1854, before L. K. Stannard, deputy clerk of Chisago county district court.)

Defendants' counsel objects to same as incompetent, irrelevant, and immaterial.

Marked Ex. A-7.

413 (Compiainant's counsel further offers certified copy of declaration of intention to become a citizen of the United States, executed by Lorentz Johnson August 8th, 1854, before L. H. Stannard, deputy clerk of the district of Chisago County, Minnesota.)

(Marked Ex. A-8.)

(Objected to by counsel for defendants as incompetent, irrelevant, and immaterial.)

Ex. A-6.—W. O. H.

PETER NORELL, being duly sworn, says that he is sixty-two years of age, a native of Sweden, and im'igrated to the United States in 1854, and settled in the county of Chisago, in Minnesota, where he still resides.

That some time in the month of September, 1854, he with others accepted the urgent proposition of one James Stinson to accompany him to Superior, Douglas County, in the State of Wisconsin, make claims of a quarter section each upon such legal subdivisions of land as he might select, follow him to the United States land office at Willom River or Hudson, file, make final proof, and payment, and convey the said land to him by warranty deed, the said James Stinson to furnish the purchase money and pay us at the rate of $30 per month from the time we left our homes in Chisago County, Minnesota, until we returned, and expenses. We arrived at Superior about the last of August or first of September, 1854, where James Stinson pointed out the quarter section of land that I was to preempt for him, and which is described in my declaratory statement made on the 21st day of October, 1854, and my certificate of purchase, No. 1849, dated October 24, 1859; also in my transfer by warranty deed made to James Stinson on the same day of the entry, to wit, on the 24th day of October, 1854, after which I received from James Stinson my pay at the rate of thirty dollars per month, according to the conditions of the verbal contract and understanding made between James Stinson and myself before I left my home in Chisago County, Minnesota.

414 He further states that while in Superior, Wisconsin, he worked upon a public road and bridge; that he never built a house and never plowed, fenced, cultivated, or resided upon any portion of the southwest quarter of section No. 35, town No. 49 north, of range 14 west, although it is good agricultural land.

He also states that he was well acquainted with John Johnson, now deceased, who was one of the same party and who hired upon the same terms by Stinson to preempt and convey, and who entered for James Stinson the northwest quarter of section 26, town 49, range 14 west, on the same day that he entered the land hereinbefore described for Stinson, to wit, on the 24th day of October, 1854, and knows that the said John Johnson did not plow, fence, cultivate, or reside upon any portion of the land that he preempted for the said Stinson, and that during the time the said John Johnson remained at Superior he worked with the rest on the public road and bridge. He further states that at the time he was hired by James Stinson to preempt he had just arrived from the old country and could not speak or understand the English language and did not know what the preemption law of 1841 and the rules and regulations of the Interior Department required of a preemptor, and did not

know that he had violated any provisions of the land laws of the United States, or that he had committed a fraud upon the Government. But he says that it is clear to him and others who performed like service for James Stinson that he, Stinson, knowingly and for his own special benefit, misrepresented the law and the facts to us, taking advantage of our ignorance of the law, and he should not be permitted to hold or transfer his worthless title obtained by perjury and fraud. He further states that when he preempted he had to make his mark, but that since he has learned to write his name.

(Signed) PETER NORELL.

In presence of—
CHAS. H. BUSH.
P. SHALEEN.

Subscribed and sworn to before me this 14th day of November, 1887. Sworn to and subscribed before me.

P. SHALEEN,
Clerk of District Court, Chisago Co., Minnesota.

(Seal of district court, Chisago County, Minn.)

415 And I hereby certify that the foregoing statement was read and explained to Peter Norell before it was signed and sworn to and that the erasures and interlineations were made before this instrument was subscribed and sworn to. I further certify that Peter Norell is an old settler in this county in good standing and that his statements are entitled to full force and effect, and that he is the identical person he represents himself to be.

Witness my hand and seal of district court at Centre City this fourteenth day of November, 1887.

P. SHALEEN,
Clerk of District Court, Chisago Co., Minn.

(Seal district court, Chisago Co., Minn.)

(Endorsed:) Sworn statement of Peter Norell.

EXHIBIT A7.—W. O. H.

I, Sven Lawson, do upon my oath declare that I am twenty-two years of age; that I first arrived in the United States on the twenty-eighth day of October, A. D. 1853, and that I have continued to reside in the United States ever since, and that it is my bona fide intention to become a citizen of the United States and to renounce forever all allegiance and fidelity that I in any wise owe to any foreign prince, potentate, state, or sovereignty, and particularly all allegiance to Oscar First, King of Sweden, of whom heretofore I have been a subject.

SVEN LAWRSON.

Subscribed and sworn to before me this eighth day of August, A. D. 1854.

L. K. STANNARD,
Deputy Clerk, Dist. Court, Chisago Co., M. T.

TERRITORY OF MINNESOTA,
County of Chisago, ss:

I, Sven Larson, do solemnly swear that I will support the Constitution of the United States and the act of Congress organizing the Territorial government of Minnesota, so help me God.

SVEN LAWRSON.

Subscribed and sworn to before me this eighth day of August, A. D. 1854.

L. K. STANNARD,
Deputy Clerk, District Court, Chisago Co., M. T.

416 TERRITORY OF MINNESOTA,
Chisago County, ss:

I, Nathan C. D. Taylor, clerk of the district court of Chisago County, do hereby certify that the foregoing is a true copy of the original declaration of Sven Larson to become a citizen this day filed in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court aforesaid this eighth day of August, A. D. 1854.

N. C. D. TAYLOR, *Clerk*,
By L. R. STANNARD, *Deputy Clerk.*

(Seal "U. S. district court, Chisago County, Minnesota Territory.")

(Endorsed on back:) Received in letter of Hon. D. Cooper, August 6th, 1855.

(Endorsed in pencil:) Swen Larson, declaration, Aug., 1854.

EXHIBIT A8.—W. O. H.

I, Lawrence Johnson, do upon my oath declare that I am thirty-two years of age; that I first arrived in the United States on the thirteenth day of August, A. D. 1853, at New York, and have continued to reside in the United States ever since that time, and that it is my bona fide intention to become a citizen of the United States and renounce forever all allegiance and fidelity that I in any wise owe any foreign prince, potentate, state, or sovereignty, and particularly all allegiance and fidelity that I owe to Oscar First, King of Sweden, of whom I have been a subject.

LORENS JOHNSON.

Subscribed and sworn to before me this eighth day of August, A. D. 1854.

L. K. STANNARD,
Deputy Clerk of Dist. Court, Chisago Co., M. T.

417 TERRITORY OF MINNESOTA,
County of Chisago, ss:

I, Lawrence Johnson, do solemnly swear that I will support the Constitution of the United States and the act of Congress organizing the Territorial government of Minnesota, so help me God.

LORENS JOHNSON.

Subscribed and sworn to before me this eighth day of August, A. D. 1854.

L. K. STANNARD,
Deputy Clerk of Dis. Court, Chisago Co., M. T.

TERRITORY OF MINNESOTA,
County of Chisago, ss:

I, Nathan C. D. Taylor, clerk of the district court of Chisago County, do hereby certify that the foregoing is a true copy of the original declaration of Lawrence Johnson, this day filed in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the court aforesaid this eighth day of August, A. D. 1854.

N. C. D. TAYLOR, *Clerk*,
By L. K. STANNARD, *Deputy Clerk*.

(Seal U. S. district court, Chisago County, Minnesota Territory.)

(Endorsed on back:) Received in letter of D. Cooper, August 6th, 1855.

(Endorsed in pencil:) Lorenz Johnson. Declaration, Aug. 8, 1854.

418 United States district court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Fred W. Goeswisch, a notary public in and for Ramsey County, State of Minnesota, do hereby certify that on the 25th and 26th days of October, A. D. 199, I took the foregoing depositions of Levi W. Folsom and John Shaleen at the county court building in the city of St. Paul, in Ramsey County, in the 2nd judicial district of Minnesota.

That at the taking of the depositions of said witnesses I was attended by John B. Simmons, counsel for the complainant, and by Arthur L. Sanborn, solicitor for the defendants; that the said witnesses before giving testimony were duly and publicly cautioned and sworn by me to tell the truth, the whole truth, and nothing but the truth relative to said cause, and were carefully examined; that the reading over and signature of the witnesses to said depositions so taken was waived by the stipulation of parties.

That said depositions were taken down in shorthand by Geo. N. Hillman, a stenographer, who was in no wise interested in said action, and afterward extended by him upon the typewriter; that it was stipulated between the parties that the depositions so taken might be used upon the trial with like force and effect as if originally taken down in longhand and afterwards read over and subscribed by the witnesses; and it was also stipulated between the parties that any objections to the evidence of the witnesses of questions propounded to them, except objections based

on the form of the questions or the objection that the evidence was not the best evidence, might be taken upon the trial with like force and effect as if formally interposed at the time of taking the same.

That I am not and never have been attorney or of counsel for any or either of the parties, and that I have sealed up the said depositions for the purpose a returning them to F. W. Oakley, clerk of the circuit court of the United States for the western district of Wisconsin, at
419 Madison, Wisconsin, and have retained them in my possession for that purpose and until they were by me deposited in the post-office to be sent to said clerk through the mails.

[L. S.] FRED W. GOSEWISCH,
Notary Public, Ramsey Co., Minn.

Witness fees, $——; notary's fees, $13.20; total, $13.20.
(Paid by counsel for complainant.)
(Endorsed:) Filed Nov. 2, 1899. F. W. Oakley, clerk.

Afterwards, to wit, November 3, 1899, filed depositions of Urgelle Gouge and Hiram Hayes, as follows, to wit:

Circuit court of the United States, for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPL'INANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

John B. Simmons for plaintiff, A. L. Sanborn for defendants.

The depositions of Urgelle Gouge and Hiram Hayes, taken on the part of the complainants at Superior, Wisconsin, October 28, 1899.

Stipulated that the testimony may be taken in shorthand by Elizabeth Deutsch and written out on the typewriter with the same effect as if taken down and by the officer in person, without waiving any objection to the admissibility of any question or the right to move to suppress either of the depositions on the part of the defendants.

URGELLE GOUGE, being duly sworn, testified as follows:

Direct examination:

Q. Your name is Urgelle Gouge?
A. Yes, sir.
Q. What is your age at this time; how old are you?
A. Seventy-three.
420 Q. You are a resident of Superior, Wisconsin?
A. Yes, sir; I am.
Q. How long have you lived here?
A. In the spring of '55.
Q. You came here in the spring of '55 and have lived here ever since?
A. Yes, sir.
Q. Did you, in the month of December, 1855, make an examination of lands on sections four (4) and five (5), township forty-eight (48), range thirteen (13), in Douglas County?

Mr. SANBORN. Counsel for defendants objects to the question because the same calls for testimony which is not properly rebuttal on the part of the United States, and give notice that they will move to suppress such part of the deposition of this witness as contains testimony in support of the bill of complaint of the United States. Said testimony is also objected to for the reason that the complainants gave notice to counsel for defendants in August, 1898, that testimony on the part of the Government in support of the bill was closed. Als' for the further reason that this witness was subpœnaed on the part of the Government to testify in the case at St. Paul in the spring of 1898, but was not called and has not since been called on the part of the complainants, and that
421 defendants' counsel have made no preparation to cross-examine the witness, not having any notice that his testimony would be taken until the 27th inst.

A. I did.

Mr. SIMMONS. To avoid any objection raised by counsel on the ground that the testimony, or any of it, which may be given by the witness is not proper rebuttal evidence, or that counsel for defendants has not prepared for cross-examination, counsel for plaintiff now here offers to stipulate on behalf of complainants that counsel for defendants may have any reasonable time he may desire to controvert the evidence of the witness or to prepare for cross-examination, and such cross-examination, if counsel desires, may be deferred to any future date within reasonable limits which he may request.

Q. Did anybody accompany you, Mr. Gouge, in making the examination of the lands just referred to?

A. Yes, sir.

Stipulated that counsel for defendants may make any objection to any question or answer at the hearing without the necessity of repetition in the deposition, which might be made here, except any objection to the form or order of the question.

Q. Will you state who they were, Mr. Gouge?

A. It was a man by the name of Louis Morriset and Charles Frazer. They are dead.

Q. How long ago did Mr. Morriset die?

A. Oh, about fifteen years ago, I think.

Q. And about how long ago did Charles Frazer die?

A. About five years ago, I think.

Q. Did you yourself make, or attempt to make, a settlement upon any of the lands examined by yourself and these two men you have named?

A. You mean if I had any intention to make claims, to make my home?

Q. Yes.

A. Yes, sir; I was there for that purpose.

Q. Will you examine this map of the city of Superior, Mr. Gouge, and tell me what piece of land it was that you yourself located upon?

A. This land here [points to northeast quarter of section 5, township forty-eight (48), range thirteen (13)]; this one [pointing to the northwest quarter of section 5, same town and range] was my neighbor, Joe Gregory.

Q. The others you mentioned?

A. The northwest quarter of section 4 was in Charles Frazer; the northeast quarter of 4 was Louis Rochford.

Q. Now, when you say the northwest quarter of 5 was your
422 neighbor Gregory, what do you mean by that, Mr. Gouge?
A. Why, he settled some time after I been there.
Q. Gregory went on to that quarter section, did he?
A. Yes.
Q. With a view to making a claim to it?
A. Yes, sir; built a good house, too.
Q. And that was after you entered on the northeast quarter of 5?
A. Yes, sir; some time after.
Q. And what did Frazer, Charles Frazer, have to do with the northwest quarter of 4?
A. He settled himself the same times I did.
Q. He entered on that quarter section, did he, with a view to claiming it?
A. Yes, sir.
Q. And what about Rochford? What did he have to do with the northeast quarter of four?
A. He took it for his home.
Q. When did he go on to that?
A. He was right there for a long time.
Q. When did he go on—about the same time you did?
A. About same time I think; may be a few days later. I don't recollect.
Q. Now, what has become of Gregory?
A. Oh, Gregory gave up and went down to Chetek; started business there.
Q. He went away from here?
A. Yes.
Q. Do you know whether he is living or not?
A. Oh, he is dead.
Q. You think he is?
A. Yes, I am sure he is dead.
Q. How lately have you seen or heard from him, Mr. Gouge?
A. Oh, about eight or nine years ago, I think. I know he is dead because he was a good friend of mine.
Q. You know that he is dead, do you?
A. Yes. Worth over a million, too, when he died. He had city to himself there.
Q. Is Louie Rochford living here now?
A. No, sir; he live at Minnesota.
Q. How long ago did he leave this part of the country?
A. Oh, he was there quite a while, about twenty years since. He is in Canada now; don't know if he came back; went to see his folks. Maybe he came back now.
Q. You don't know his post-office address, do you?
A. No, sir; I can't. His nephew, Johnny Bertrand, wrote to him often.
Q. Is he a resident of Superior?
A. Yes, sir; he is alderman in the Second Ward.
Q. Now, of these four quarter sections that you have named, Mr. Gouge, how many of them did you and Frazer examine in December, '55?
A. Oh, we examined the four of them.

Q. The whole four?
A. Yes.
423 Q. Did you go over them thoroughly?
A. Yes. Went all through quarter section, around.
Q. And did you go across through the quarter sections, too?
A. Yes, sir.
Q. Did you know how to locate quarter sections?
A. No; nothing at all. Around the town line I cut some trees; other places I didn't see no tree cut.
Q. I asked you, Mr. Gouge, if you knew how to find the land by the Government marks—posts?
A. Well, I knew something myself, but Mr. Morriset was a good man, too; put good many person' on the claim. He took us there—showed us the quarter and corner posts, and so on.
Q. You saw the corner posts yourself, did you?
A. Yes, sir; was nearly surveyed then.
Q. So that you know that you were on these four quarter sections, do you?
A. Yes, sir; could read the posts myself.
Q. Did you find on any of those four quarter sections any evidences of improvement in the way of houses?
A. We found on Rochford's, a cabin on the edge of the creek, about three feet on back part and four in front, about eight or nine feet square, stuck in to make it fit, and three poles on the roof with bushes.
Q. You say it was about three feet high on the back?
A. Yes; on the back part.
Q. How high on the front did you say?
A. About four feet.
Q. What was on the top?
A. Boughs.
Q. Was it waterproof?
A. No, sir.
Q. How were the logs laid up. Were there cracks open between the logs?
A. Yes. No notch with the ax, but just laid on top.
Q. It was not notched with an ax?
A. Yes, sir.
Q. Was there any floor in it?
A. No floor, no window, no fireplace.
Mr. SANBORN. No fireplace?
A. No.
Q. Was there any door?
A. No, sir; it was cut about square hole, about so large. I thought somebody put that up for hunting.
Q. Well, would you say that it was similar to huts built by hunters?
A. Yes; I thought it was built for somebody hunting.
Q. Was it in any way fit for a house to live in?
A. No, sir; no more shelter than it was outside.
Q. Were there any shanties similar to this one or any kind of
424 a building whatever on the other three quarter sections?
A. No, sir; nothing at all.

Q. Was there anything in the nature of a clearing on any of these four sections?

A. No; you could see nothing was cut.

Q. Was there around this hut or shanty which you found on the Rochford claim any clearing?

A. No; just for to build that shed.

Q. Did the stumps to the trees which had been cut to build the shanty with remain there in the ground?

A. Yes, sir.

Q. Were there any evidences that there had been any land cultivated or planted on any of those quarter sections?

A. Yes; he used to plant something.

Q. I mean when you went there, Mr. Gouge?

A. No; there was no clearance at all; nothing had been done.

Q. How long did you remain on the northeast quarter of five?

A. Why, I was there three years steady with my family.

Q. What did you live on while you were there with your family?

A. I had a little money to live on.

Q. What did you live in?

A. In my house.

Q. Who built the house?

A. I did. Built a house and barn and used to keep a horse there.

Q. And during the time you were there were you all over this quarter section?

A. Yes, sir.

Q. Frequently?

A. Yes.

Q. And did you ever find any sign of any other building or clearing or cultivation on the quarter section?

A. No, sir.

Q. Did you while you were living there, did you afterward go over those three quarter sections of your neighbors?

A. Yes; went around often.

Q. And did you ever discover any signs of a building or of a clearing on any of those other three quarter sections during the time you were living in that locality, other than those which your neighbors—Rochford, Frazer, and Gregory—themselves built?

A. It was nothing before them at all.

Q. Did you learn after making this settlement, Mr. Gouge, that anybody else had claimed to make a preemption on it before?

A. We heard that by the land office when we come to prove up.

Q. Who did you learn had made a claim on the quarter section you settled on?

A. I think it was some land officer, Mr. Dean. I don't remember the other man's name.

Q. Who did you hear was the man that had preempted it?

A. We heard that at land office.

Q. What was the man's name that claimed to have been there
425 and preempted it before you?

A. Oh, Israel Johnson was the man on my land.

Q. Did you learn, Mr. Gouge, from the land office, who were the men

who had claimed to preempt those three quarter sections before Rochford and Frazer and Gregory went on them?

A. Well, they told us the name of a Swede that——

Q. Do you remember the name?

A. I think on Frazer's land was Andrew Walmark. I don't remember the others.

Q. On whose quarter section?

A. On Charlie Frazer's.

Q. Do you remember whether Ole Westerland was one of them?

A. I don't recollect very well.

Q. Do you remember whether Peterson was one of them?

A. No; I don't recollect.

Q. You say you lived on there three years. What did you do then, Mr. Gouge?

A. I was working—clearing.

Q. During the three years?

A. Yes.

Q. And did you plant it?

A. Yes, sir.

Q. How much land did you clear?

A. Oh, I had maybe four or five acres.

Q. And after the end of the three years what did you do?

A. Well, that is the time I hurt myself and got sick; come here under the doctor's care; pretty near died, too.

Q. Came into town?

A. Yes; and my brother-in-law used to go there.

Q. And what did he do? You say used to go?

A. Why, he used to go and sleep and take care of the house.

Q. And did you continue to cultivate it, the clearing?

A. Yes; after I was better I went.

Q. How long did you continue to do that?

A. Oh, about ten, twelve years, I guess. Maybe more; maybe thirteen, fourteen, I guess. But I had no house then; they burn it, you know.

Q. Oh, the house was burned, was it?

A. Yes. Went one morning there and everything was burned. Charlie Frazer's was burned, Rochford's was burned—had story and half good house—and John Gregory's nice house burned; all our houses.

Q. Were they all burned about the same time?

A. Yes.

Q. Was it by any forest fire?

A. There was no fire only where the house was burned.

Q. No fire except where the houses were burned?

A. No.

Q. Can you tell what year it was or about what year that was the house was burned?

A. No; I can't tell; I can't recollect the time.

426 Q. How long after you came into town after you were sick and left the land?

A. About five years or six years, I think it was; about '58, '59, when they burned them.

Q. It was stated at the opening of this deposition by the attorney for Mr. Stinson that you were subpœnaed in the spring of 1898 to go down to St. Paul. Is that so, Mr. Gouge?

A. Yes, sir.

Q. Do you know the man who subpœnaed you?

A. No.

Q. Was he a United States marshal?

A. Well, that is—somebody say he was. I didn't know.

Q. Did he make any arrangement with you about going down to St. Paul at the time he subpœnaed you?

A. He did.

Q. What was it?

A. He said, I will be such time, at half past eleven in night at depot and meet me there, pay my expense, and I be there with other party and we go. Then I went and I didn't see nobody, so I come back home.

Q. What has been your business or occupation, Mr. Gouge?

A. Carpenter trade.

Q. And are you able now to work at your occupation?

A. No; can't do nothing now.

Q. How long is it since you have been able to do anything?

A. Oh, about eight or nine years ago; rheumatism, you know, bother me too much.

How did the marshal come to agree with you or promise to meet you and advance your fees, Mr. Gouge?

A. When?

Q. How was it that he came to make you that promise?

A. Oh, I don't know. I told him I couldn't afford to pay my fare to go there, and he said, "I fix that."

Q. And was that true?

A. Yes.

Cross-examination by Mr. SANBORN:

Q. You never have seen him since?

A. No, sir. He was at the house, too, and be so quick I had no time to ask his name. He was in a hurry.

Q. And you never heard anything more about the case after that until yesterday?

A. No, sir.

Q. When Mr. Simmons saw you?

A. Yes.

427 Q. Where did you come from when you came to Superior?

A. Came from Montreal, Canada.

Q. Were you then married?

A. I was married here in this country in '55.

Q. Before you went down on this land?

A. Yes, sir.

Q. What did you do here for—did you have any business here in '55 before you went on the land during that spring and summer and fall?

A. No; it was not much worth then.

Q. The country here was new then?

A. Come with little money and bought little property and must live on money.

Q. How much money did you have when you came?
A. $1,000.
Q. How had you got that; you earned that?
A. Yes; worked hard for it, too.
Q. At Montreal?
A. No; had about four hundred when I left Montreal. I started out logging in '43 and was building a house there right in the woods, doing everything, selling lumber, making shingles, and everything.
Q. Where was this?
A. In Ontanagon.
Q. In Ontonagon, Michigan?
A. Yes.
Q. So when you got here you had about a thousand dollars?
A. Yes, sir.
Q. When you came here you bought some lots?
A. Yes, sir.
Q. In the city here?
A. Yes, sir.
Q. In Superior city?
A. Yes, sir.
Q. What value lots did you buy?
A. Seven hundred dollars for two lots. Corner 3rd street.
Q. Right down here by the bay?
A. Yes, sir.
Q. That left you three hundred dollars, about?
A. Yes, sir. Why, I bought with Charlie Frazer, we bought partner; we bought two lots partner.
Q. You paid out seven hundred dollars for your part?
A. No; seven hundred for both.
Q. How much money did you pay out, out of your thousand dollars for this lot?
A. Three hundred and fifty.
Q. Did you have the rest?
A. Had the rest to live on; had to build a house, you know.
Q. What month were you married in '55?
A. Why, it was in December some time, I don't recollect.
Q. Was it before you went out on this land?
A. Yes.
Q. Is your wife living now?
A. Oh, she was dead long time ago.
Q. Have you a family?
A. Yes.
428 Q. How many?
A. I got five.
Q. All grown up?
A. Yes; quite big men, too.
Q. What is your nationality?
A. French and Irish; my mother was Irish, my father was French.
Q. When you went down into this country how did you get there? When you went down on to this quarter section how did you get there?
A. We came by Bluff Creek.

Q. You went out to Allouez Bay and then up Bluff Creek?
A. Yes.
Q. What was the character of the country around here; was it timbered or wooded country?
A. Yes, sir; very thick tamarack woods.
Q. Was the soil wet?
A. Oh, very wet.
Q. Very wet?
A. Yes.
Q. Tamarack grows generally in wet soil?
A. Yes.
Q. And was very much tangled and very hard to cleau, clear up?
A. Yes; so thick.
Q. Was that true of the country; take it right through west of this over toward South Superior, was it the same all through there?
A. Same thing.
Q. Same thing all through back from the water front?
A. Yes. We used to hunt in winter times; all the same thing from the scraggy pines through.
Q. At that time there was no drainage, no way to get the water off, was there?
A. No.
Q. Except through this Bluff Creek and Nemadji River?
A. No roads of any kind.
Q. No roads of any kind and no drainage of any kind?
A. No, sir.
Q. Well, this land that you speak of and any of this land back through here has not been cultivated, has it, very much, from that time down to this?
(Objected to as immaterial.)
A. Find some.
Q. Some of it has been cleared up and after clearing I suppose it gets dry?
A. Yes; gets dry after being cleared up.
Q. Now, you say you cleared up a few acres on this land and raised something?
A. Yes, sir.
Q. What did you raise?
A. Potatoes.
Q. Anything else?
A. Garden stuff, cucumbers.
Q. Wasn't the soil pretty wet?
A. No; it was only close back to Bluff Creek.
429 Q. Where it had drainage?
A. Yes, sir.
Q. Did you plant your potatoes on top the ground or in the ground?
A. In the ground.
Q. Didn't plant them on top and cover them up?
A. Yes, sir.
Q. Made a hill over them?
A. Yes, sir; had good crop, too.

Q. Could you have raised any back of the Bluff Creek?
(Objected to as immaterial.)
A. I do not know; not unless we could drain it.
Q. It would need to be ditched down to the creek?
A. I cleared pines to make hay; cleared that to make hay.
Q. Now, while you lived down there what did you do for a living to support yourself and your wife?
A. Why, I had some money.
Q. You used this money that you had before?
A. Yes, sir.
Q. How long did that last?
A. I don't recollect. Why, I used to work sometimes; come in and work.
Q. Used to come into Superior and work?
A. Yes.
Q. Well, did you used to fish and hunt?
A. Hunt in the winter time we used to.
Q. In the winter? Deer through here, plenty of deer?
A. I never killed no deer.
Q. Plenty of water fowl?
A. Lots partridge and rabbits.
Q. Ducks and geese?
A. Yes; I killed lots of them. The creek was full in spring and fall with ducks and geese.
Q. You went to the land office and you found that Israel Johnson had made preemption on this before you did?
A. Yes, sir.
Q. Then you contested his right?
A. Yes, sir.
Q. And did you have any—didn't you go into the land office afterwards and have an examination?
(Objected to as immaterial and irrelevant.)
A. Well, of course he told us that, and then I signed the paper the same as December 6, 1856, for the party to come here and settle.
Q. You gave him notice to appear?
A. Yes; I put it in a paper we had then.
Q. The Chronicle?
A. Yes. Then they never appeared.
Q. That is, you gave notice in a newspaper to this Israel Johnson to come here and have a contest in the land office?
A. Yes.
(Objected to as irrelevant, immaterial, incompetent, and not the best evidence.)
Q. Didn't you then go to the land office and have a contest and have a hearing?
(Same objection.)
430 A. No; nobody came.
Q. And when was this you gave notice?
A. When I gave notice?
Q. When?
(Same objection.)

A. It was December 6, 1856.
Q. December, 1856?
A. Yes, sir.
Q. That was the time you gave notice?
A. Yes. I addressed it from the printing office and I gave to Jim Bardon one day. Mr. Stinson tell me—say that if he had such paper as that I was entitled to get something—I couldn't find them; afterward he said if I found them to give to Jim Bardon, so to be sure I gave to Jim Bardon to show to them but don't give to them, I want to keep that for recollection; but Jim told me he gave to them.
Q. What paper was it, the notice?
A. Yes, sir; the receipt of the payment.
Q. The receipt of the payment for the notice in the paper?
A. Yes, sir. But Johnny told me—Johnny told me, I got paper that you advise us to keep copy every weeks, every copy; after that I ask him for the papers and he said he couldn't find them. I know he has got them.
Q. Why didn't you have a hearing in the land office? Why didn't you follow it up and have a hearing in the land office?
(Objected to as immaterial and irrelevant.)
A. I don't know.
Q. You don't know why?
A. Of course we was waiting for a party to come. He didn't come.
Q. Well, it was not necessary that he should; you could go in there and make your proof.
A. The thing of it was, the land officer was on the other side, was against it, didn't like to give any satisfaction.
Q. You think the land officer favored Stinson, or the other side?
A. Yes, a good many——
Q. Now, which side of Bluff Creek did you build your house; east or west?
A. On the west side.
Q. That was about the—on the west side. Did you go on to the east side; did you examine the land east of the creek?
A. Oh, yes; I made a bridge across the creek and come cross any time I wanted.
Q. Do you mean to say that you went all over that quarter section?
A. We went around; yes.
Q. Went around it, yes; did you go into the middle of it?
A. Oh, I went all over, hunting in winter, you know; went all over.
431 Q. And you mean to say that there was no improvements of any kind on that quarter section?
A. No, sir.
Q. Now, you are sure of that, Mr. Gouge?
A. Yes, sir; I am sure of that. If we had signs, little bit of improvement I wouldn't take because I told Mr. Morriset don't want to have no bother, no trouble; there was lots of vacant land there could take right behind us. Morriset said there was no improvement at all, it is clear, then you enter on such section; didn't find nothing.
Q. You mean to say you went all over this piece of land before?
A. We went around it. When we come to quarter section we pass right straight.

Q. Right around it?
A. And then come in the other way.
Q. On the lines of the quarter and of the section there is blazes, wasn't there, on the trees?
A. Yes, sir.
Q. That is where you went, where the blazes are?
A. Yes, sir.
Q. You didn't go on the swamp in the middle, inside of the blazes, did you?
A. Yes, sir.
Q. Then?
A. Yes, sir. The quarter section they blaze for a mile.
Q. And you followed the blazes?
A. We walked half a mile across the country and cut our pass. We guess as close as we could and come down right in the center.
Q. You don't mean to say that you went on every square rod of that quarter section?
A. Square rod? No.
Q. How long did it take you to make this examination to find if there were any improvements on this quarter section?
A. We was there working all one day.
Q. All one day?
A. Yes, sir.
Q. Pretty rough country too?
A. Yes.
Q. And in that day you went over three or four quarter sections?
A. Yes; same day we went over three.
Q. Three quarter sections?
A. Yes.
Q. And you say you only found any evidence of improvement——
A. On the Rochford land.
Q. On the Rochford land?
A. Yes, sir.
Q. That was on Bear Creek?
A. Yes, sir.
Q. That was right east of your claim?
A. Yes, sir. Rochford had splendid nice house, two story, built on side hill.
Q. Now, when you came a good many preemptions had been made the year before you came here, through this country generally a good many entries made?
A. Good many, of course.
432 Q. You seen some of the claim shanties on others?
A. Some right back here.
Q. Well, now, how were they on the whole? Were they good houses?
(Objected to as immaterial, irrelevant, and not cross-examination.)
A. A claim shanty.
Q. Were they good houses to live in, those claim shanties, as they run generally?
(Same objection.)
A. Could live in, but it was not very good.

Q. Most of the people lived in here in the village, lived in the city here, did they?

(Same objection.)

A. Some of them; some live in the woods on their claim.

Q. Where the people lived on their claim could they make their living on their claims?

(Same objection.)

A. Oh, no.

Q. Couldn't do it, could they?

A. No.

Q. Had to make their living somewhere else?

A. Had to work in town.

Q. And live out there?

A. Go back there.

Q. How far was it from the settled part of the city by water to your claim?

A. By water?

Q. Yes.

A. About three miles.

Q. And about two miles and a half over land?

A. About so, I think.

Q. Could you have got to this claim of yours by land easily?

A. Well, I cut a road after I was there, as I had a horse; cut a road to come through.

Q. Was there any bridge over the Nemadji?

A. No.

Q. Go across in a boat?

A. In the winter time go across the ice.

Q. Go across the ice in the winter?

A. Yes. I built first ferry that crossed the left-hand river.

Q. Left-hand river is the Nemadji River?

A. Yes, sir.

Q. You lived here ever since that time that you came here?

A. Yes, sir.

Q. After you were taken sick you didn't go back out there to live?

A. Yes.

Q. To live?

A. Yes; until they burn the house. After that, my wife didn't like to stay there. She was afraid.

433 Q. Were you living in the house when it was burned? When the house burned were you living in it?

A. No; that is, I was not well yet.

Q. You were living in here then?

A. Yes; the doctor was after me three or four times in the night. I couldn't be on the claim.

Q. The house was empty at that time?

A. Yes; I used to send my brother-in-law to sleep there.

Q. Was he there when the house burned?

A. No.

Q. The house was empty when it burned?

A. I guess it was burned in the daytime.

Q. Well, it was empty?
A. Yes, sir.
Q. Were these other houses empty?
A. Yes, sir.
Q. They were empty, were they?
A. Expect the people had to go to work.
Q. You don't know when the houses were burned yourself, you didn't see them; only what you heard?
A. I don't recollect.
Q. All you know about that time as to the time when they burned is what you heard?
A. We had notion that somebody burned it.
Q. You thought somebody set them on fire?
A. They all burned at that time; yes.
Q. Did you ever take up any other claim?
A. Yes; took one in Minnesota.
Q. What, preemption?
A. Yes, preemption. Was worth nothing at the time of panic in Duluth; land not worth anything, I didn't have nothing.
Q. Well, did you go over to Minnesota and settle on a claim afterwards?
A. Oh, I went there a couple of nights or so.
Q. And did you build a house?
A. No.
Q. What did you do there during those two nights?
A. Put up four logs.
Q. And slept inside the logs?
A. Yes.
Q. Anybody with you?
A. Yes.
Q. Who?
A. A man by the name of Joseph Lefrash. Why, I didn't intend to prove on it, it was no count.
Q. Where was it; how far from Duluth?
A. Back of Oneota some place; back of some island, I can't think of the name; above the bay.
Q. Above the St. Louis Bay?
A. Yes.
Q. On the Duluth side; on the Minnesota side?
A. Yes.
Q. And back from Oneota?
A. Yes; little further up.
Q. Was it up on the bluff?
A. Yes, sir.
434 Q. Up on the bluff above Oneota?
A. Yes.
Q. Were there other claimants over there, too?
A. Claimants?
Q. Yes.
(Objected to as immaterial, irrelevant, and not cross-examination.)
A. Well, I didn't see any.

Q. You saw other claim shanties like these four logs that you put up over there, haven't you, through this country?

(Same objection.)

A. Some place I seen some.

Q. Now, Mr. Gouge, it's a fact, isn't it, that the claim shanties through this country, both in Minnesota and Wisconsin, in those early days, were pretty flimsy and pretty poor?

(Objected to as immaterial, incompetent, and irrelevant.)

A. Yes, sir; but I didn't prove on mine.

Q. But the claim shanties, as a whole, were a pretty poor lot, were they?

A. Well, some of them; some were good enough.

Q. Do you know one of them that has, where the man has lived on it any length of time? You know one of them where the claimant has has ever continued to live on it any length of time in this time?

(Same objection.)

A. Yes, good many of them.

Q. A long time?

A. About year or so.

Q. After that they would go off.

(Same objection.)

A. When they prove up, they go off.

Q. That is the general way they do business up here?

A. There is good many claims back here, back of town we could got and keep by living on.

Q. Some half-breed Indians would live out there?

A. Yes.

Q. No white man, would they?

(Same objection.)

A. I saw some white man there, too.

Q. This is a cold climate up here some of the time?

A. Yes, sir.

Q. And they have very severe storms up here, don't they, from the lake?

A. Sometimes; yes.

Q. The soil is a very heavy red clay, is it not?

(Same objection.)

A. Yes, sir.

Q. And water stays in it a good while, doesn't it?

A. Yes, sir.

435 Q. It holds water very tenaciously?

A. Yes, sir; more than some other.

The reading over of the deposition to the witness and his signature thereto are waived.

HIRAM HAYES, being duly sworn, testified as follows:

Direct examination by Mr. SIMMONS:

Q. Your name is Hiram Hayes?

A. Yes.

Q. And you are an attorney at law and reside at Superior, Wisconsin?

A. Yes.

Q. And were you living in Superior and engaged in the practice of your profession in the year 1856?

A. Yes.

Q. Counsel for defendants in this action has notified the counsel for complainants that he proposes to offer in evidence a letter, or copy of a letter, written by yourself to the Commissioner of the General Land Office at Washington, D. C., about the month of May, 1856, together with a reply written to you by the Commissioner of the General Land Office under date of May 22, 1856, and a copy of which I now show you, and will ask the stenographer to mark for identification "Exhibit Z;" and reserving all and every legal objection to the admissibility of those letters in evidence on the ground either of competency, relevancy, or materiality, I desire to ask you if you have made search for the original or copies of the two letters referred to or for the letter which I now show you purporting to be written by you to the Commissioner of the G'neral Land Office under date of May 2, 1856, and which I will ask the stenographer to mark for identification "Exhibit Y," and for a certain other letter said to have been written by the Commissioner or some other official of the General Land Office to yourself under date of October 20, 1856, in which you were advised, referring to the subject-matter of your letter of May 28, 1856, that "at the time of filing these statements it was a ruling of this office that the filing of a declaratory statement for a tract of land subject to private entry did not preclude a party from filing a second time for unoffered land." This question is
436 simply whether you have made search for these letters or copies?

A. Yes; I have made search.

Q. Now, will you state what search you have made and how thoroughly you have searched for them?

A. I have no copy book that I can find of letters written by me in the fore part of 1856. In such books, copy books, as I have, the index or indices do not show any correspondence during this period with the G'neral Land Office or any officer of the Government; nor have I, so far as I can find, any files of copies of letters written to that Department—I mean the General Land Office. During—well, during the same period I can go specifically to Exhibit Z. I can find no original of the copy of the Commissioner's letter marked "Exhibit Z," and I have looked everywhere among my papers where such letter would probably be. My custom has been in a general way to keep my letters in accordance to the months in every year.

Mr. SANBORN. But you don't find that custom observed back as far as this time quite?

A. Yes; I do—yes; in that respect.

Mr. SANBORN. But you don't find these particular ones?

A. I don't find these particular ones nor do I find Exhibit Z anywhere else—the original of Exhibit Z anywhere else among my papers or in my possession or knowledge.

Q. And in reference to the letter said to have been written to you on or about October 20, 1856, or any letter containing a statement in substance as similar to that quoted, do you find any such letter?

A. I can not after search for it.

Q. I will as; you if you are then satisfied, after thorough search, that neither any of these letters nor their copies are now in your possession or where you can find them?

A. Yes.

Q. Can you give any information as to where they are?

A. I can not. Now, I will say to you, parenthetically, it is not impossible or improbable but that Bright, with whom I was associated, had this correspondence along with this original correspondence. Of course I know nothing about his papers. He died a great many years ago.

Q. You say he was associated with you? Was he a partner of yours?

A. Yes, sir.

Q. Well, were the partnership effects separated, divided, correspondence, etc.?

A. Well, this is a mere surmise—a mere theory. The letters to and from the firm during 1856–57, along there, so far as they have been preserved, are probably in my possession.

437 Q. In the years 1854 and 1855 I suppose the lands in Douglas County were subject to preemption, were they not, under the laws of the United States?

A. I think they were, so far as surveyed.

Q. And when, if you know, were they first offered for purchase at cash by cash entry?

A. I don't know.

Q. Was it some years after 1855?

A. Must have been, I think.

Q. I will ask you this general question, Colonel, if you were personally familiar with any of the facts relating to the preemption or settlement upon the lands in controversy in this action?

A. No, sir.

Q. And particularly with reference to those entries referred to in this—in the letter shown you, marked "Exhibit Z," did you have any personal knowledge of the facts and circumstances connected with the alleged prior preemption claims or settlements on those lands?

A. No personal knowledge.

Cross-examination by Mr. SANBORN:

Q. I will ask you to state whether you have any recollection of receiving from Thomas A. Hendricks, Commissioner of the Gen'ral Land Office, in or about the year 1856, a letter, in answer to some inquiry of yours, stating that patents had been issued upon certain entries which you had inquired about from the officers of the United States?

(Objected to as immaterial and irrelevant.)

Q. And what recollection you may have on that subject?

A. I have recollection of a letter from the General Land Office, saying that patents had been issued on certain entries concerning which I had made inquiries or had correspondence with that office.

Q. And can you give, approximately, the time when the letter that you have referred to was received by you?

(Same objection.)

A. Oh, I think it must have been and was in the year '56.

438 Redirect examination:

Q. After learning that patents had been issued, Colonel, did you pursue the matter further, or was it dropped as far as you were concerned?

A. The correspondence was dropped, so far as I was concerned, after being informed that patents had issued.

(Stipulated that copies of the four letters referred to in the testimony of the witness Hayes, furnished by the Interior Department, may be used in place of the originals, subject to all objections that the same are immaterial, incompetent, and irrelevant.)

(Stipulated that the reading over of the deposition to the witness and his signature thereto hereby waived.)

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(Endorsed:) Circuit court of the United States, for the western district of Wisconsin. The United States of America, complainants, vs. James Stinson and Henry J. Stinson, defendants. Depositions of Urgelle Gouge and Hiram Hayes. Filed Nov. 3, 1899. F. W. Oakley, clerk.

439 DEPARTMENT OF THE INTERIOR, M. V. B.

GENERAL LAND OFFICE, E. A. K.

March 19th, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed papers, pages one to three, inclusive, are true and literal exemplifications of a certain letter received in this office from one Hiram Hays, Jan. 24, '56, and the record of the reply thereto, of date May 22, 1856.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) LEWIS A. GROFF,
Commissioner of General Land Office.

Letter from Hiram Hayes to Land Office, Jan. 24, 1856.

To the honorable Commissioner of the General Land Office:

I transmit at this time the affidavits of Saxton Lyon and John T. Morgan relating, respectively, to the NW. ¼ of section 26, in township 49 N. of range 14 west, and to the NW. ¼ of section 1, in township 48 N. of range 14 W., situate in the Fond du Lac land district.

As attorney for the affiants aforenamed, I would ask that the Department would suspend the issue of patents to the two John Johnsons who are alleged to have settled and preempted the above-described tracts of land, and would pray that the validity of these preemptions might be submitted to an investigation, such as you may be pleased to direct, since fraud can not fail to be proved in either case.

I am most respectfully, sir, your obt. servt.,

(Signed) HIRAM HAYES,
Atty. for Affiants.

(Endorsed:) D. 26, 470, Hiram Hays, Superior, Wis. Rec. Jan. 24, '56. Files an affidavit in ref. to preemption claim of Jno. Johnson. Answered June 16, 1856. See letter to R. & R. Oct. 8, 1857, Gmly., as supposed R. Causin, 5–52 Jan. 24, '56.

440 *Letter from Land Office to Hiram Hayes, May 22, 1856.*

GENERAL LAND OFFICE,
May 22nd, 1856.

HIRAM HAYES, esq.,
Superior, Wis.

SIR: In reference to Hudson preemption entries Nos. 2906, 2907, 3208, 3210, 2311, and 3213, to which you have recently called my attention and against the validity of which entries I find you have heretofore forwarded to this Office certain ex parte affidavits, &c., I have to inform you that in consequence of the great press of business upon the Office these cases have been taken up and disposed of without any knowledge on the part of the clerk examining the same of the filing by you of the adverse ex parte affidavits mentioned, and that in consequence patents have been issued on the said entries and the cases thus passed beyond the control of the Office. Entry No. 1336 was patented as far back as in January, 1855, and a patent also issued on No. 2908 at the same time that the six entries first herein mentioned were patented.

Very respectfully, your obt. servt.,

(Signed) THOS. A. HENDRICKS,
Commissioner.

Complainant objects to letters between Hiram Hayes and General Land Office offered in evidence by defendants as immaterial, irrelevant, and incompetent, and further, because not accompanied by copies of the affidavits referred to therein or other competent proof of contents of such affidavits.

Notice in the Superior Chronicle of contests in preemption land cases.

Notice by John T. Morgan, July 14, 1856, to John Johnson that he would on Thursday, 11th day of September, at 10 o'clock, before the register and receiver of the land office at Superior, Wis., proceed to establish his preemption right to the NW. ¼, section 1, T. 48, R. 14, in Douglas County, when and where you can appear and cross-examine my witnesses and produce counter proof, as you may see fit.

Repeated July 15th and 29, 1856.

Gustof Johanson is notified that on Wednesday, 25th June, at 10 o'clock a. m., before the register and receiver of the United States land office of Superior, Wis., he would proceed to establish his preemption right to lots 1, 2, and 3, in section 1, T. 48, R. 14, Douglas County, when and where, in case you wish to resist such right, you can appear
441 and cross-examine my witnesses and produce such counter proof as you may see fit. (Signed) Ambrose B. Burbank, N. Y. City.

Superior, Wis., June 2, '56.

Advertised June 3 and repeated 10 and 17.

To Isreal Janssen:

Notice by Urgell Gouge that he would, on Thursday, 15th of January, 1857, at 10 o'clock, before the register and receiver of the land office at Superior, Wis., proceed to prove up preemption claim and establish his right to enter the NE. quarter 5–48–13 in Fond du Lac district, when and where, etc.

Dated December 6, '56. Repeated December 16 and 23, '56, and January 6, '57.

To Ola Westerland:

Notice by Louis Rocheford that, on Wednesday, January 14, 1857, at 10 o'clock, he would proceed to establish his preemption right to the NE. ¼ 4–48–13, in Fond du Lac district.

December 9, '56. Repeated December 16 and 23, '56.

To Andrew Wallmark:

Notice by Charles Fregeau that he would, on Friday, January 16, '57, proceed to prove up my preemption claim and establish my right to enter NW. ¼ 4–48–13 W. in Fond du Lac district.

Dated December 6, '56, and advertised December 9, 16, and 23.

To Ola Westerland:

SIR: Take notice that I shall proceed, on Wednesday, January 14, 1857, at 10 o'clock in the forenoon of that day, before the register and receiver of the land office of Superior, Wis., to prove up my preemption claim and establish my right to enter the northeast quarter of section four in T. 48 N., R. 13 W., in the Fond du Lac land district, when and where, in case you wish to contest said claim, you can appear and cross-examine my witnesses and produce such counter proof as you may see fit.

LOUIS ROCHEFORD.

Superior, Wis., December 6, 1856.

The foregoing copies are received subject to the objection on the part of the complainants that the same are incompetent, irrelevant, and immaterial. This objection shall also apply to all the records shown on record pages 646 to 748 herein, commencing with the declaration of trust and ending with the deed of Emma C. McGivern to James Stinson.

(Endorsed:) Notices in Superior Chronicle, 1856.

(Preemption certificate No. 1850.)

442 *Patent from United States to Sven Larson.*

The United States of America to all to whom these presents shall come, greeting:

Whereas Sven Larson, of Douglas County, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office of Hudson, whereby it appears that full payment has been made by the said Sven Larson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of public lands," for the northwest quarter of section thirty-five in township forty-nine of range fourteen in the district of lands subject to sale at Hudson, Wisconsin, containing one hundred and sixty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said Sven Larson.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto said Sven Larson and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Sven Larson and to his heirs and assigns forever.

In testimony whereof I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the 15th day of December, in the year of our Lord one thousand eight hundred and fifty-five and of the Independence of the United States the eightieth.

By the President:

FRANKLIN PIERCE.
By H. E. BALDWIN,
Ass't Sec'y.

J. N. GRANGER,
Recorder of the General Land Office.

(Seal of the General Land Office.)

(Recorded vol. 3, page 353 E.)

(Endorsed:) Patent U. S. to Sven Larson. NW. ¼, 35, 49, 14. A47848. Office of register of deeds, Douglas County, Wisconsin, ss: I hereby certify that the within instrument was filed in this office for record on the 25th day of December, A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in Book 15 of deeds, page 583. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

443 *Warranty deed from Sven Larson to James Stinson.*

This indenture, made this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-four, between Sven Larson, of the county of Douglas and State of Wisconsin, of the first part, and James Stinson, of the city of St. Paul, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred and sixty dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, all the following described piece or parcel of land, situate, lying, and being in the county of Douglas and State of Wisconsin, and known and designated as follows: The northwest quarter of section No. thirty-five (35), in township No. forty-nine (49) north, of range No. fourteen (14) west. Containing one hundred and sixty (160) acres, more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, in and to the above described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever. And the said Sven Larson, party of the first part, for his heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and has a good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever, and that the aforesaid premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof he will forever warrant and defend.

In testimony whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

SVEN LARSON. [SEAL.]

Sealed and delivered in the presence of—

M. S. GIBSON.
ANDREAS SWENSON.

444 STATE OF WISCONSIN,
County of St. Croix, ss:

Be it known that on the twenty-fourth day of October, A. D. 1854, before the undersigned, personally came Sven Larson, the grantor to the foregoing deed, from him as such grantor to James Stinson, to me personally known to be the identical person described in and who executed the said deed, and he acknowledged that he executed the said deed freely and voluntarily, for the uses and purposes therein expressed.

[L. S.] M. S. GIBSON, *Notary Public.*

(Endorsed:) Warranty deed. Sven Larson to James Stinson, office of register of deeds, county of Douglas, Wis. I hereby certify that the within deed was filed in this office for record on the 12″ day of April, A. D. 1855, at 10 o'clock a. m., and was duly recorded in Liber A of Deeds, pages 222, 223. Frederick L. Whitaker, register of deeds. Oct. 24″, 1854. Fees, $1.00.

Patent from United States to Gustaf Johnson.

The United States of America, to all to whom these presents shall come, greeting:

Preemption certificate, No. 3209.

Whereas Gustaf Johanson, of Douglas County, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Superior, whereby it appears that full payment has been made by the said Gustaf Johanson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the lots numbered one, two, and three of section one, in township forty-eight, of range fourteen, in the district of lands formerly subject to sale at Hudson, now Bayfield, Wisconsin, containing one hundred and forty-five acres and fifty-eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Gustaf Johanson.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Gustaf Johanson, and to
445 his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenaces of whatsoever nature thereunto belonging, unto the said Gustaf Johanson and to his heirs and assigns forever.

In testimony whereof, I, Abraham Lincoln, President of the United States of America, have caused these letters to be matle patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States the eighty-ninth.

By the President.

[L. S.]

ABRAHAM LINCOLN,
By EDW. D. NEILL, *Sec'y.*
J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 12, page 396. Examined.)

(Endorsed:) 60 No. A47841. Gustaf Johanson. March 25, 1865. Lots 1, 2, 3, int. T. 48, 14. Office of register of deeds, Douglas County, Wisconsin., ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 390. J. F. Ware, register of deeds, by Geo. H. Detling, deputy.

Warranty deed of June 22, 1855, Gustaf Johnson to James Stinson.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Gustaf

Johanson, of the county of Douglas, and State of Wisconsin, party of the first part, and James Stinson, of St. Paul, Minnesota Territory, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of two hundred and seventy dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, the following piece or parcel of land lying and being in the county of Douglas, and State of Wisconsin, to wit: Lots one (1), two (2), and three (3), in section No. one (1), in township No. forty-eight (48) north, of range No. fourteen (14) west, containing one hundred and forty-five acres and fifty-eight*y* hundredths (145 58/100), according to Government survey.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and all
446 the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in, and to the above-bargained premises and their hereditaments and appurtenances. To have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to heirs and assigns forever.

And the said Gustaf Johansson for his heirs, executors, and administrators do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above bargained premises, in the quiet and peaceable possesion of the said party of the second part, his heirs and assigns, against all and every person or persons, lawfully claiming the whole or any part thereof he will forever warrant and defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
GUSTAF x JOHNANSSON. [SEAL.]
mark

Sealed and delivered in presence of—
M. S. GIBSON.
OLTO WALLMARK.

STATE OF WISCONSIN,
County of St. Croix.

Be it remembered, that on the twenty-second day of June, A. D. 1855, personally came before me the above-named, Gustaf Johansson, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[L. S.]

M. S. GIBSON,
Notary Public.

(Endorsed:) Warranty deed. Gustaf Johansson to James Stinson. Lots 1, 2, & 3, sec. 1, T. 48, R. 14. June 22/55. Douglas.

447 *Patent from United States to Israel Johnson.*

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 3213.

Whereas Israel Jansson, of Douglass County, State of Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Israel Jansson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northeast quarter of section five in township forty-eight of range thirteen, in the district of lands formerly subject to sale at Hudson, now Superior, Wisconsin, containing one hundred and seventy-two acres and eighty-eight hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said Israel Johnson.

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Israel Jansson and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Israel Jansson and to his heirs and assigns forever.

In testimony whereof I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the first day of May, in the year of our Lord one thousand eight hundred and fifty-six and of the Independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Secy.

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 7, page 386. E.)

448 (Endorsed:) 78, No. A47838. Israel Jansson. May 1, 1856. N. E. 5, 48, 13. Office of register of deeds, Douglas County, Wisconsin, ss: I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in Book 15 of Deeds, page 393. J. A. Ware, register of deeds. By Geo. H. Detling, deputy.

Warranty deed, June 22, 1855, Israel Johnson to James Stinson.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Israel Jansson, of the county of Douglas and State of Wisconsin, party of the first part, and James Stinson, of St. Paul, Minnesota Territory, party of the second part,

Witnesseth that the said party of the first part, for and in consideration of the sum of two hundred and seventy dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, his heirs and assigns forever, piece or parcel of land lying and being in the county of Douglas and State of Wisconsin, to wit: The northeast quarter of section No. five (5) in township No. forty-eight (48) north of range No. thirteen (13) west, containing one hundred and seventy-two acres and eighty-eight hundredths (172-88 100), according to Government survey,

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above-bargained premises, and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said Israel Jansson, for his heirs, executors, and administrators, does covenant, grant, bargain, and agree to, and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second
449 part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
ISRAEL x JANSSON. [SEAL.]
mark.

Sealed and delivered in presence of—

M. S. GIBSON.
OTTO WALLMARK.

STATE OF WISCONSIN, *County of St. Croix:*

Be it remembered, that on the twenty-second day of June, A. D. 1855, personally came before me the above-named Israel Jansson, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[L. S.] M. S. GIBSON, *Notary Public.*

(Endorsed:) Deed. Israel Jansson to James Stinson. 22 June, '55. Registers's office, Douglas Co., Wis. Filed for record on Monday, the 20th day of August, A. D. 1855. c 20" 9 o'clock a. m., and recorded Liber A, pages 449, 450. Frederick Whitaker, register of deeds. By James Robinson, jr., deputy.

Patent from United States to John Johnson.

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 1848.

Whereas John Johnson, of Douglas County, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said John Johnson according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of section twenty-six, in township forty-nine, of range fourteen, in the district of lands subject to sale at Hudson, Wisconsin,
450 containing one hundred and sixty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said John Johnson.

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John Johnson, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said John Johnson, and to his heirs and assigns forever.

In testimony whereof I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty-five and of the Independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Secy.

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 3, page 351. E.)

(Endorsed:) Patent. United States to John Johnson. NW. ¼, 26, 49, 14. No. A47845. Office of register of deeds, Douglas County, Wisconsin, ss: I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in Book 15 of Deeds, page 386. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

Warranty deed, Oct. 24, 1854, John Johnson to James Stinson.

This indenture, made this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-four, between John Johnson, of the county of Douglas and State of Wisconsin, of the first part, and James Stinson, of the city of St. Paul, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred & seventy-five dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold, and confirmed, and by
451 these presents does give, grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, forever, all the following-described piece or parcel of land, situate, lying, and being in the county of Douglas and State of Wisconsin, and known and designated as follows: The northwest quarter of section No. twenty-six (26) in township No. forty-nine (49) north, of range No. fourteen (14) west, containing one hundred & sixty (160) acres, more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever. And the said John Johnson, party of the first part, for his heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and has a good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever; and that the aforesaid premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
JOHN x JOHNSON. [SEAL.]
mark.

Sealed and delivered in the presence of—
M. S. GIBSON.
SVEN LARSON.

STATE OF WISCONSIN,
County of St. Croix, ss:

Be it known that on the twenty-fourth day October, A. D. 1854, before the undersigned, personally came John Johnson, the grantor to the foregoing deed, from him as such grantor to James Stinson, to me personally known to be the identical person described in and who executed the said deed, and he acknowledged that he executed the said deed, freely and voluntarily for the uses and purposes therein expressed.

[L. S.] M. S. GIBSON,
Notary Public.

452 (Endorsed:) Warranty deed. No. A79271. John Johnson to James Stinson. Office of register of deeds, county of Douglas, Wis. I hereby certify that the within deed was filed in this office for record on the 12th day of April, A. D. 1855, at 10 o'clock a. m., and was duly recorded in Liber A of deeds, pages 225, 226. Frederick I. Whitaker, register of deeds. N.W. 26–49–14. Fees, $1.00. Ret. A. L. Sanborn, Madison. Oct. 24th, 1854. Office register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 5 day of Sept., A. D. 1893, at 1 o'clock P. M., and was duly recorded in book 53 of deeds, pages 157 & 158. Halford Erickson, register of deeds.

Patent from United States to John Johnson.

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 3212.

Whereas John Johnson, of Douglass County, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said John Johnson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of section one in township forty-eight of range fourteen in the district of lands subject to sale at Hudson, Wisconsin, containing one hundred and sixty-one acres and sixty hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said John Johnson.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John Johnson, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said John Johnson, and to his heirs and assigns forever.

In testimony whereof I, James Buchanan, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the second
453 day of May in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-third.

By the President:

JAMES BUCHANAN.
By T. T. ALBRIGHT, *Sec'y.*

[L. S.] J. N. GRANGER,
Recorder of the General Land Office.

(Recorded Vol. 10, page 53. E.)

(Endorsed:) 83. No. A47843. 2d John Johnson. May 2, 1859. N. W. ¼ 1, 48, 14. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 388. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

Warranty deed of June 22, 1855, John Johnson to James Stinson.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five, between John Johnson, of Douglas County, Wisconsin, party of the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of two hundred and ninety dollars to him in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, the following piece of parcel of land lying and being in the county of Douglas and State of Wisconsin, to wit: The northwest quarter of section one (1), in township No. forty-eight (48) north, of range No. fourteen (14) west; containing one hundred and sixty-one acres and sixty hundredths (161–60 100), according to public survey.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and all the estate, right, title, interest, claim, or demand whatsoever, of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above-bargained premises, and their hereditaments and appurtenances. To have and to hold the said premises as
454 above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said John Johnson, for his heirs, executors, and administrators, does covenant, grant, bargain, and agree to, and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
JOHN X JOHNSON.
mark

Sealed and delivered in presence of—
M. S. GIBSON.
OTTO WALLMARK.

STATE OF WISCONSIN,
County of St. Croix.

Be it remembered, that on the twenty-second day of June, A. D. 1855, personally came before me the above-named John Johnson, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[L. S.] M. S. GIBSON,
Notary Public.

(Endorsed:) Deed. John Johnson to James Stinson. June 22 55. Register's office, Douglas Co., Wis. Filed for record on Monday the 20th day of August, A. D. 1855, c 20" 9 o'clock a. m., and recorded in Liber A, pages 456, 457. Frederick I. Whitaker, register of deeds. By James Robinson, jr., deputy.

455 *Patent from United States to Lorenz Johnson.*

The United States of America, to all to whom these presents shall come, greeting:

Preemption certificate No. 1851.

Whereas Lorens Johnson, of Douglass County, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Lorens Johnson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of section thirty-three, in township forty-nine of range fourteen, in the district of lands subject to sale at Hudson, Wisconsin, containing one hundred and sixty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said Lorens Johnson.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Lorens Johnson and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Lorens Johnson and to his heirs and assigns forever.

In testimony whereof I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

By the President:

[L. S.] FRANKLIN PIERCE,
By H. E. BALDWIN, *Sec'y.*

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 3, page 354 E.)

(Endorsed:) Patent. U. S. to Lorens Johnson. N. W. ¼ 33, 49, 14. No. a47 47. 1851. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 384. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

456 *Warranty deed of Oct. 24, 1854. Lorens Johnson to James Stinson.*

This indenture, made this twenty-fourth day of October, in the year of our Lord one thousand eight hundred 'nd fifty-four, between Lorens Johnson, of the county of Douglas and State of Wisconsin, of the first part, and James Stinson, of the city of St. Paul, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of two hundred & fifty dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted and conveyed, and by these presents does grant and convey, unto the said party of the second part, his heirs and assigns forever, the following described piece or parcel of land situate in the county of Douglas and State of Wisconsin, described as follows, to wit: The northwest quarter of section No. (33) thirty-three, in township No. forty-nine (49) north, of range No. fourteen (14) west, containing one hundred & sixty (160) acres, more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part, for his heirs, executors, and administrators, does covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises and has a good right to sell and convey the same; that the same are free of all incumbrances whatsoever, and that the aforesaid premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof will forever warrant and defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
LORENS X JOHNSON. [SEAL.]
mark

Sealed and delivered in the presence of—
M. S. GIBSON.
SVEN LARSON.

457 *Warranty deed from Lorenz Johnson to James Stinson.*

STATE OF WISCONSIN,
St. Croix County, ss:

Be it remembered, that on the twenty-fourth day of October, A. D. 1854, before the undersigned, a notary public in and for said county, per-

sonally came the above-named Lorenic Johnson to me known and acknowledged that he executed the foregoing instrument for the uses and purposes herein mentioned.

[L. S.]

M. S. GIBSON,
Notary Public.

(Endorsed:) Lorens Johnson to James Stinson, Oct. 24", 1854. Warranty deed. Register's office, Douglas Co., Wis. Filed for record 10 o'clock a. m., Thursday, the 12" day of April, A. D. 1855, and recorded in Liber "A," pages 226, 227. Frederick I. Whitaker, register of deeds.

Patent from United States to Martin Larson.

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate, No. 2907.

Whereas Martin Larson, of Douglass County, State of Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Martin Larson according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northeast quarter of section six, in township forty-eight, of range thirteen, in the district of lands formerly subject to sale at Hudson, now Superior, Wisconsin, containing one hundred and seventy acres and seventy-five hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said Martin Larson.

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted and by these presents do give and grant unto the said Martin Larson and to his heirs the said tract above described, to have and to hold the same, together with
458 all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Martin Larson and to his heirs and assigns forever.

In testimony whereof, I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of May, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Sec'y.
J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 7, page 381–E.)

(Endorsed:) 77, No. A47840. Martin Larson. May 1, 1856. N. E. 6, 48, 13. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 391. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

Warranty deed of June 1, 1855; Martin Larson to James Stinson.

This indenture, made this first day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Martin Larson, of the county of Douglas, and State of Wisconsin, of the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred and ninety ($290) dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the following described piece or parcel of land situate, lying, and being in the county of Douglas, and State of Wisconsin, and known and designated as follows: Northeast quarter of section six (6), in township forty-eight (48), range thirteen (13), containing one hundred and sixty (160) acres more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereonto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, in
459 and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said Martin Larson, party of the first part, for his heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and has a good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever, and that the aforesaid premises in the quiet and peaceable possession of the said party of second part, his heirs and assigns, against all and ever' person lawfully claiming or to claim the whole or any part thereof he will forever warrant and defend.

In testimony whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

MARTIN LARSON. [SEAL.]

Sealed and delivered in presence of—
JOHAN JOHANS.
M. S. GIBSON.

STATE OF WISCONSIN,
St. Croix County, ss:

Be it known that on the first day of June, A. D. 1855, before the undersigned, a notary public in and for said county, personally came the above-named Martin Larson, to me known, and acknowledged that he

executed the foregoing instrument for the uses and purposes therein mentioned.

[L. S.]

M. S. GIBSON,
Notary Public.

(Endorsed:) Deed. Martin Larson to James Stinson. 120 register's office. Douglas Co., Wis. Filed for record on Monday, the 20th day of August, A. D. 1855, 20″ 9 o'clock a. m., and recorded in Liber A, pages 458, 459. Frederick I. Whitaker, register of deeds. By James Robinson, jr., deputy.

460 *Patent to Sven Magnusson.*

The United States of America to all to whom these presents shall come, greeting.

Preemption Certificate No. 2908.

Whereas, Sven Magnusson of Douglas County, State of Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson whereby it appears that full payment has been made by the said Sven Magnusson according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northeast quarter of section two in township forty-eight of range fourteen in the district of lands formerly subject to sale at Hudson, now Superior, Wisconsin, containing one hundred and sixty-two acres and twenty-two hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said Sven Magnusson.

Now know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents, do give and grant, unto the said Sven Magnusson and to his heirs, the said tract above described; to have have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Sven Magnusson and to his heirs and assigns forever.

In testimony whereof, I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of May in the year of our Lord, one thousand eight hundred and fifty-six, and of the Independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Sec'y.

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 7, page 382, E.)

461 (Endorsed:) 2908. 84. No. A 47844. Sven Magnusson. May 1/56. N. E. 2, 48, 14. Office of register of deeds, Douglass County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 387. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

Deed of June 1, 1855, from Magnusson to Stinson.

This indenture, made this first day of June, in the year eighteen hundred and fifty-five, between Sven Magnusson, of Douglas County and State of Wisconsin, of the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part,

Witnesseth, that the said party of the first part, in consideration of the sum of three hundred dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey to the said party of the second part, the following-described piece or parcel of land, situate and lying in the county of Douglas and State of Wisconsin, and known and described as follows, to wit: Northeast quarter of section two (2) in township forty-eight (48), in range fourteen (14), containing one hundred and sixty (160) acres, more or less.

To hold the above-described premises with all the appurtenances to the said party of the second part, his heirs and assigns, forever, to their only use. And the said Sven Magnusson, for himself, his heirs, executors, and administrators, does hereby covenant with the said party of the second part, his heirs and assigns, that he the said party of the first part, at the time of the sealing and delivery hereof, is well seized in possession of a perfect and absolute estate in fee simple in the premises hereby granted, without any manner of charge, condition, or incumbrance whatever; and that he, the said Sven Magnusson, and his heirs, the premises before described, will warrant and forever defend to the said party of the second part, his heirs and assigns, against the claims and demands of all persons.

In witness whereof the party of the first part has hereto set his hand and seal the day and year first above written.

his
SVEN x MAGNUSSON. [L. S.]
mark

Sealed and delivered in presence of—
GUSTAF JOHANSON.
M. S. GIBSON.

462 STATE OF WISCONSIN,
St. Croix County, ss:

Be it remembered that on this first day of June, A. D. 1855, before me, a notary public for said county, personally appeared Sven Magnusson, to me known to be the person named in and who executed the foregoing conveyance, and acknowledged the same by his sealed and subscribed to be his free act and deed.

In witness whereof I have hereunto set my hand & seal the day and year in this certificate first above written.

[L. S.] M. S. GIBSON,
Notary Public.

(Endorsed:) W. Deed. Sven Magnusson to James Stinson. June 1, 1855. Register's office, Douglas Co., Wis. Filed for record on Monday, the 20th day of August, A. D. 1855. c 20" 9 o'clock a. m., and recorded in Liber "A," pages 459, 460. Frederick I. Whitaker, register of deeds. By James Robinson, jr., deputy.

Patent to Peter Norell.

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 1849.

Whereas Peter Norell, of Douglas County, Wisconsin, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Peter Norell according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southwest quarter of section thirty-five in township forty-nine of range fourteen in the district of lands subject to sale at Hudson, Wisconsin, containing one hundred and sixty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Peter Norell.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Peter Norell and to his heirs, the said tract above described, to have and to hold the same, together with
463 all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Peter Norell, and to his heirs and assigns forever.

In testimony whereof, I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty-five and of the independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Sec'y.

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 3, page 352. E.)

(Endorsed:) Patent. United States to Peter Norell. SW. ¼ 35, 49, 14. No. A47849. 1849. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 382. J. F. Ware, register of deeds, by Geo. H. Detling, deputy.

Deed of Oct. 24, 1854, Peter Norell to James Stinson.

This indenture, made this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-four, between Peter Norell, of the county of Douglas and State of Wisconsin, of the first part, and James Stinson, of the city of St. Paul, of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of two hundred & fifty dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold, and confirmed, and by these presents do give, grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described piece or parcel of land, situate, lying, and being in the county of Douglass and State of Wisconsin, and known and designated as follows: The southwest quarter of section No. thirty-five (35), in township No. forty-nine (49) N. of range No. fourteen (14) W., containing one hundred & sixty (160) acres, more or less.

To have and to hold the same, together with all and singular
464 the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said Peter Norell, party of the first part, for his heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and has a good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever, and that the aforesaid premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof he will forever warrant and defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
PETER x NORELL. [SEAL.]
mark.

Sealed and delivered in the presence of—
M. S. GIBSON.
SVEN LARSON.

STATE OF WISCONSIN, *County of St. Croix, ss:*

Be it known that on the twenty-fourth day of October, A. D. 1854, before the undersigned, personally came Peter Norell, the grantor to the foregoing deed, from him as such grantor to James Stinson, to me personally known to be the identical person described in and who executed the said deed, and he acknowledged that he executed the said deed freely and voluntarily for the uses and purposes therein expressed.

[L. S.] M. S. GIBSON,
Notary Public.

(Endorsed:) Warranty deed. Exhibit A–5 W. O. H. Peter Norell to James Stinson. Office of register of deeds, county of Douglas, Wis., Oct. 24", 1854. I hereby certify that the within deed was filed in this office for record on the 12" day of Apirl, A. D. 1855, at 10 o'clock a. m., and was duly recorded in liber A of deeds, pages 223, 224. Frederick I. Whitaker, register of deeds. Fees, $1.00.

465 *Patent to Aron Petterson.*

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 2906.

Whereas Aron Petterson, of Douglass County, State of Wisconsin, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Aron Petterson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of section five, in township forty-eight, of range thirteen, in the district of lands formerly subject to sale at Hudson, now Superior, Wisconsin, containing one hundred and seventy-two acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Aron Petterson.

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Aron Petterson and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Aron Petterson, and to his heirs and assigns forever.

In testimony whereof, I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of May, in the year of our Lord one thousand eight hundred and fifty-six and of the independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Sec'y.

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 7, page 380. E.)

466 (Endorsed:) 2906 82. No. A47839. Aron Petterson. May 1, 1856. N. W. 5, 48, 13. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 392. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

Deed of June 1, 1855, from Aron Petterson to James Stinson.

This indenture, made this first day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Aron Petterson, of the county of Douglas and State of Wisconsin, of the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred & seventy-five ($275) dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described piece or parcel of land, situate, lying, and being in the county of Douglas and State of Wisconsin, and known and described as follows: The northwest quarter of section five in township forty-eight (48), range thirteen (13), containing one hundred and sixty acres more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said Aron Petterson, party of the first part, for his heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and has a good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever, and that the aforesaid premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof he will forever warrant and defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
ARON x PETERSON. [SEAL.]
mark.

Sealed and delivered in the presence of—
GUSTAF JOHANSSON.
M. S. GIBSON.

467 STATE OF WISCONSIN,
St. Croix County, ss:

Be it known that on the first day of June, A. D. 1855, before the undersigned, a notary public in and for said county, personally came the above named Aron Petterson, to me known, and acknowledged that he executed the foregoing instrument for the uses and purposes therein mentioned.

[L. S.] M. S. GIBSON,
Notary Public.

(Endorsed:) Deed. Aron Petterson to James Stinson. 1st June, '55. Register's office. Douglas Co., Wis. Filed for record on Monday, the 20th day of August, A. D. 1855, 20″ 9 o'clock a. m., and recorded in Liber "A," pages 453, 454. Frederick I. Whitaker, register of deeds, by James Robnsion, jr., deputy.

Patent to Andreas Svenson.

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 1847.

Whereas Andreas Svenson, of Douglass County, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Andreas Svenson according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southwest quarter of section twenty-eight, in township forty-nine of range fourteen in the district of lands subject to sale at Hudson, Wisconsin, containing one hundred and sixty acres according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Andreas Svenson;

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Andreas Svenson and to his heirs the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Andreas Svenson and to his heirs and assigns forever.

468 In testimony whereof I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty-five and of the Independence of the United States the eightieth.

By the President:

[L. S.] FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Sec'y.

J. N. GRANGER,
Recorder of the General Land Office.

Recorded, vol. 3, page 350 E.

(Endorsed:) Patent. U. S. to Andreas Svenson. SW. ¼ 28, 49, 14. No. A47846. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 385. J. F. Ware, register of deeds, by Geo. H. Detling, deputy.

Deed of Oct. 24, 1854, from Andreas Svenson to James Stinson.

This indenture, made this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-four, between Andreas Svenson, of the county of Douglas and State of Wisconsin, of the first part, and James Stinson, of the city of St. Paul, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred and seventy dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold, and confirmed, and by these presents does give, grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described piece or parcel of land situate, lying, and being in the county of Douglas and State of Wisconsin, and known and designated as follows: The southwest quarter of section No. twenty-eight (28) in township No. forty-nine (49) north of range No. fourteen (14) west, containing one hundred and sixty (160) acres, more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the
469 said party of the first part, either in law or equity, in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said Andreas Svenson, party of the first part, for his heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and has a good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever, and that the aforesaid premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof he will forever warrant and defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first written above.

ANDREAS SWEN SON. [SEAL.]

Sealed and delivered in the presence of—
M. S. GIBSON,
SVEN LARSON.

STATE OF WISCONSIN,
County of St. Croix, ss:

Be it known that on the twenty-fourth day of October, A. D. 1854, before the undersigned, personally came Andreas Svenson, the grantor to the foregoing deed, from him as such grantor to James Stinson, to me personally known to be the identical person described in and who executed the said deed, and he acknowledged that he executed the said deed, freely and voluntarily, for the uses and purposes therein expressed.

[L. S.] M. S. GIBSON,
Notary Public.

(Endorsed:) Warranty deed. Andreas Svenson to James Stinson, Oct. 24th, 1854. Office of register of deeds, county of Douglas, Wis. I hereby certify that the within deed was filed in this office for record, on the 12" day of April, A. D. 1855, at 10 o'clock a. m., and was duly recorded in Liber A of deeds, pages 221, 222. Frederick I. Whitaker, register of deeds. Fees, $1.00.

470 *Patent to Andrew Wallmark.*

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 3210.

Whereas Andrew Wallmark of Douglas County, State of Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson whereby it appears that full payment has been made by the said Andrew Wallmark according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of section four in township forty-eight of range thirteen, in the district of lands formerly subject to sale at Hudson, now Superior, Wisconsin, containing one hundred and seventy-three acres and fifty-seven hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Andrew Wallmark.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Andrew Wallmark and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appertenances of whatsoever nature thereunto belonging, unto the said Andrew Wallwark, and to his heirs and assigns forever.

In testimony whereof I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of May, in the year of our Lord one thousand eight hundred and fifty-six and of the Independence of the United States the eigthtieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN,
Asst. Sec'y.

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 7, page 384 E.

471 (Endorsed:) 3210. 80. No. A47837. Andrew Wallmark. May 1, 1856. N. W. 4, 48, 13. Office of register of deeds. Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 394. J. F. Ware, register of deeds. By Geo. H. Detling, deputy.

Deed of June 22, 1855, Andrew Wallmark to James Stinson.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Andrew Wallmark, of the county of Douglass and State of Wisconsin, party of

the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part.

Witnesseth that the said party of the first part, for and in consideration of the sum of two hundred and seventy dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, his heirs and assigns forever, the following piece or parcel of land lying and being in the county of Douglas and State of Wisconsin, to wit, the northwest quarter of section No. four (4) in township No. forty-eight (48) north of range No. thirteen (13) west, containing one hundred and seventy-three acres and fifty-seven hundredths (173–57 100), according to Government survey. Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in, and to the above-bargained premises, and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said Andrew Wallmark, for his heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or
472 persons lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ANDREW WALLMARK. [SEAL.]

Sealed and delivered in presence of—
M. S. GIBSON.
OTTO WALLWARK.

STATE OF WISCONSIN,
County of St. Croix:

Be it remembered that on the twenty-second day of June, A. D. 1855, personally came before me the above-named Andrew Wallmark, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[L. S.]

M. S. GIBSON,
Notary Public.

(Endorsed:) Deed. Andrew Wallmark to James Stinson. 22 June, '55. Register's office, Douglas Co., Wis. Filed for record on Monday, the 20th day of August, A. D. 1855, 20″ 9 o'clock a. m., and recorded in liber "A," pages 452, 453. Frederick I. Whitaker, register of deeds. By James Robinson, jr., deputy.

Stipulation as to patent to Otto Wallmark.

It is hereby stipulated that a patent dated May 1, 1856, was issued by the United States to Otto Wallmark for lots 7, 8, and 9 in NW. quarter of NE. quarter of section 1, 48, 14, in same form as patent to Sven Larson. John B. Simmons, solicitor for complt.

Deed of June 22, 1855, from Otto Wallmark to James Stinson.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Otto Wallmark, of the county of Douglass, in the State of Wisconsin, party of the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part.

Witnesseth that the said party of the first part, for and in consideration of the sum of two hundred and seventy dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the
473 said party of the second part, his heirs and assigns forever, the following piece or parcel of land lying and being in the county of Douglas and State of Wisconsin, to wit, lots seven (7), eight (8), and nine (9), and the northwest quarter of the northeast quarter of section one (1) in township No. forty-eight (48) north of range No. fourteen (14) west, containing one hundred and forty-two acres and seventy-eight hundredths (142–78 100), according to Government survey, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in, and to the above-bargained premises, and their hereditaments and appurtenances; to have and to hold the said premises as above described, with the hereditament and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said Otto Wallmark, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

OTTO WALLMARK. [SEAL.]

Sealed and delivered in presence of—
M. S. GIBSON.
ANDREW WALLMARK.

STATE OF WISCONSIN,
County of St. Croix:

Be it remembered, that on the twenty-second day of June, A. D. 1855, personally came before me the above-named Otto Wallmark, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[L. S.] M. S. GIBSON,
Notary Public.

474 (Endorsed:) Deed. Otto Wallmark to James Stinson. 22 June, '55. Register's office, Douglas Co., Wis. Filed for record on Monday, the 20th day of August, A. D. 1855, 20″ 9 o'clock a. m., and recorded in Liber "A," pages 448, 449. Frederick I. Whitaker, register of deeds. By James Robinson, jr., deputy.

Patent to Ola Westerland.

The United States of America to all to whom these presents shall come, greeting:

Preemption certificate No. 3211.

Whereas Ola Westerland, of Douglass County, State of Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at Hudson, whereby it appears that full payment has been made by the said Ola Westerland according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands" for the northeast quarter of section four in township forty-eight of range thirteen in the district of lands formerly subject to sale at Hudson, now Superior, Wisconsin, containing one hundred and seventy-three acres and fifty-nine hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Ola Westerland.

Now, know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Ola Westerland and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Ola Westerland and to his heirs and assigns forever.

In testimony whereof, I, Franklin Pierce, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the first day of May, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

By the President:

[L. S.]

FRANKLIN PIERCE,
By H. E. BALDWIN, *Sec'y.*

J. N. GRANGER,
Recorder of the General Land Office.

(Recorded, vol. 7, page 385 E.)

475 (Endorsed:) 3211. No. A47836. 79. Ola Westerland. May 1, 1856. NE. ¼ 4, 48, 13. Office of register of deeds Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 26th day of Dec., A. D. 1890, at 10.50 o'clock a. m., and was duly recorded in book 15 of deeds, page 395. J. F. Ware, register of deeds, by Geo. H. Detling, deputy.

Deed of June 22, 1855, from Ola Westerland to James Stinson.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Ola Westerland, of the county of Douglass and State of Wisconsin, party of the first part, and James Stinson, of St. Paul, Minnesota Territory, of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of two hundred and seventy dollars to him in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, the following piece or parcel of land lying and being in the county of Douglass and State of Wisconsin, to wit: The northeast quarter of section No. four (4), in township No. forty-eight (48) north, of range No. thirteen (13) west, containing one hundred and seventy-three acres and fifty-nine hundredths (173–59/100) according to Government survey, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in, and to the above-bargained premises, and their hereditaments and appurtenances. To have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said Ola Westerland, for his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance of law, in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above-bargained

premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons, lawfully claiming the whole or any part thereof he will forever warrant and defend.

476 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

OLA WESTTERLAND. [SEAL.]

Sealed and delivered in presence of—

M. S. GIBSON.
OTTO WALLMARK.

STATE OF WISCONSIN, *County of St. Croix:*

Be it remembered, that on the twenty-second day of June, A. D. 1855, personally came before me, the above-named Ola Westerland, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

[L. S.] M. S. GIBSON,
Notary Public.

(Endorsed:) Ola Westerland to James Stinson. June 22", '55. Register's office, Douglas Co., Wis. Filed for record on Moonday, the 20th day of August, A. D. 1855, 20", 9 o'clock a. m., and recorded in liber "A," pages 450, 451, 452. Frederick I. Whitaker, register of deeds, by James Robinson, jr., deputy.

Letter of April 14, 1856, James Stinson to Thomas Stinson.

HAMILTON, *April 14, 1856.*

MY DEAR FATHER: This is to certify that all property held by me in Minnesota Territory and State of Wisconsin, excepting that in Traverse de Sioux, Minnesota Territory, and one share; that is, one-twenty-seventh of Superior and about three hundred and twenty acres adjoining said Superior in Douglas County, Wisconsin, all the rest and residue of the property in the aforesaid Minnesota or Wisconsin is, and belongs to my father, Thomas Stinson, of Hamilton, Canada West, and is held by me simply to facilitate the conveyance and sale of the said property if the said sale and conveyance shall be advisable, etc., etc.

In witness whereof I hereunto set my hand this 14th day of April, 1856.

JAMES STINSON.

To THOMAS STINSON, Esq., *Hamilton, Canada West.*

I admit the above statement to be correct.

THOMAS STINSON.

MAY 3, 1856.

477 *Certificate of judge.*

PROVINCE OF CANADA,
County of Wentworth, to wit:

I, Alexander Logie, of the city of Hamilton, in said county and Province, esquire, sole presiding judge of the surrogate court, in and for the

county of Wentworth, in the Province of Canada, do hereby certify that George Rolph, whose name is attached to the annexed certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the surrogate court aforesaid and keeper of the record and seal thereof, duly appointed and qualified to office. And that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal at my chambers in Hamilton aforesaid, this eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

[L. S.] A. LOGIE, [L. S.]
Judge of the Surrogate Court in and for the County of Wentworth in the Province of Canada.

Certificate of clerk.

PROVINCE OF CANADA,
County of Wentworth, to wit:

George Rolph, registrar of the surrogate court for the county of Wentworth, in the Province of Canada, do hereby certify the annexed paper writing to be a true, perfect, and complete copy of the record in the matter of the probate of the will of Thomas Stinson, late of the city of Hamilton, in the county of Wentworth and Province of Canada, esquire, deceased, and the same was duly executed and proved agreeably to the laws and usages of the Province of Canada.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court at Hamilton aforesaid, this eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

[L. S.] GEO. ROLPH,
Registrar of the Surrogate Court of the County of Wentworth, in the Province of Canada.
R. G. DAMPIER,
Assist. Registrar.

478 *Exemplification of letters testamentary.*

In Her Majesty's surrogate court, of the county of Wentworth.

Be it known that on the fifteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four, the last will and testament with one codicil of Thomas Stinson, late of the city of Hamilton, in the county of Wentworth, esquire, deceased, who died on or about the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-four, at the city of Hamilton aforesaid, and who at the time of his death had a fixed place of abode at the city of Hamilton in the said county of Wentworth, was proved and registered in the said surrogate court, a true copy of which said last will and testament with codicil is hereunder written, and that the administration of all and singular the personal estate and effects, rights, and credits of the said deceased, and any way concerning his will, was granted by the aforesaid court to James Stinson of the city of Hamilton in the county of Went-

worth, esquire, and John Stinson, of the same place, esquire, two of the executors named in the said will, they having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in his will, so far as they are thereunto bound by law, and to exhibit a true and pefect inventory of all and singular the said estate and effects, rights, and credits, and to render a just and true account of their executorship whenever required by law so to do. Power being reserved of making the like grant to Colin D. Reid, of the city of Hamilton, barrister at law, the other executor named in the said will, when he shall apply for the same.

[L. S.] GEO. ROLPH, *Registrar said Court.*
R. G. DAMPIER, *Assist. Registrar.*

This is the last will and testament of me, Thomas Stinson, of the city of Hamilton, in Province of Canada, esquire.

I give, devise, and bequeath, all and singular the estate, real, and personal, namely, lands, tenements, hereditaments, monies, debts, mortgages, bonds, or of whatever other nature or sort the same or any of the same may be, and wherever the same or any of the same may be, of which I shall die, seized, possessed of, or entitled to, or over which I have a disposing power, unto my two sons, James and John, and Colin D. Reid, of the said city of Hamilton, barrister at law, hereinafter designated and referred to as my trustees, to hold the same and every of the same and every part of the same unto my said sons, James Stinson and
479 John Stinson and the said Colin D. Reid, as joint tenants, their heirs, executors, administrators, and assigns, according to the several natures and qualities of the same, respectively, upon the trusts and to and for the ends, intents, and purposes, and with the powers hereinafter expressed, declared, limited, and given of and concerning the same, that is to say:

Upon trusts to collect and get in all debts and monies due and outstanding with as little delay as possible and sell and dispose of for money all my other personal estate and effects and receive the same and give all necessary discharges therefor.

And I do hereby declare and my will is that said trustees and the survivors and survivor of them and the heirs, executors, administrators of such survivor or my trustees, for the time being, of this will, whether them or he be appointed, as is hereinafter provided for and declared, as the case may be, shall stand possessed of or interested in said monies, so to be collected and got in and received from such sale or sales of personalty as aforesaid upon trust, justly to pay, satisfy, & discharge all costs, charges, and expenses which they or any of them shall or may pay, sustain, or be put unto, in, or about the execution of the trusts herein set forth. Secondly, to pay, satisfy, and discharge all my funeral and testamentary expenses. Thirdly, to pay, satisfy, and discharge all my just debts owing by me at the time of my death. Fourthly, to set apart the sum of twenty-three thousand three hundred and fifty dollars of lawful money of Canada and invest the same in their names in the purchase of stock of any or all of the chartered banks of the late province of Upper Canada or of the late province of Lower Canada or of the province of Canada, or of any of same or by way of loan to any person or persons or

body corporate or company upon real estate, or how otherwise as my said trustees shall see fit, and pay unto my wife, Margaret, all the interest, dividends, and annual profits thereof, provided the same shall not exceed in amount the sum of three hundred and fifty pounds of like lawful money or fourteen hundred dollars per annum, to and for her own use, benefit, and behoof, and if same shall exceed said fourteen hundred dollars per annum, then to pay to her thereout the sum of fourteen hundred dollars per annum each and every year during her life, and in lieu and satisfaction of all dower or thirds which she, my said wife, shall or may be entitled to, in to or out of my said estat*e*, real and personal, or either of same aforesaid; if she shall so elect to take the same as such within one year next after my death by a declaration in writing under her hand delivered to my said trustees. And fifthly, to retain unto each of my said trustees the sum of seventy-five pounds for the first year next after my death, and fifty pounds for the second year next after my death, as a slight compensation for their trouble in the trusts hereby in them reposed.

480 And I do hereby further declare and direct and my will is that if my said wife shall not elect to receive and take the said annuity in full bar and satisfaction of and in lieu of all her dower and thirds of my estate, real and personal, as aforesaid, that my said trustees shall not set apart nor invest said sum of money so appointed for the realization of her annuity as aforesaid.

And I do hereby further direct and declare and my will is that if my said personal estate shall prove insufficient for all the purposes aforesaid, or if it can not be realized in sufficient times for the said objects and purposes, or if my said trustees or the survivors or survivors of them, or my other trustees to be appointed, as is hereinafter named, or any of them, as the case may be, shall see other good cause therefor, then, and in any of such cases, it shall and may be lawful to and for, and I do hereby authorize and empower my said trustees, either named or to be appointed, as is hereinafter set forth, the survivors or survivor of them to make sale and absolutely dispose of sufficient portion of my said real estate as shall be required for the purposes aforesaid or as they shall deem meet, and shall obtain the best price or prices they can reasonably for same, and shall convey and assure the same unto the purchaser or purchasers thereof (my said trustees having the power to sell in as many parcels and at as many times as they see fit), in fee simple or otherwise, as he, she, or they shall direct, and receive the purchase money thereof and grant all necessary discharges for same.

And I do hereby further direct and declare that immediately thereafter my said trustees or the survivors of survivor of them, shall, by proper deed or assurance in the law, convey and assure unto the Reverend Adolphus Phillip Morris, lately of said city of Hamilton, clerk, one lot of land in Superior, State of Wisconsin, of the value of one hundred pounds, or four hundred dollars, to and for his sole use, benefit, and behoof, if he shall then be living. Otherwise, this trust not to be carried out, and the lot of land so to be conveyed to him as to situation and value shall be wholly in the discretion of my said trustee or the survivors or survivor of them.

And I do hereby further direct and declare and my will is that immediately thereafter or as soon thereafter as my said trustees can con-

veniently, they, my said trustees or the survivors or survivor of them, shall, with all care and to the best of their knowledge and ability, divide all the rest residue and remainder of my said estate, real and *and* personal estate, into three equal portions, and do and shall, by proper deed, declaration, or other instrument, in writing, under their hands and seals, convey and assure unto my said son James one of such portions to and for his own use and behoof forever. And by like deed or instru-
481 ment convey and assure unto my son John aforesaid one other portion of said residue to and for his own use and behoof forever. And by like deed or instrument convey and assure unto my son Henry Argue, if he shall then have attained the age of twenty-one years, or if not when he shall so attain the said age, one other of said three portions of said residue to and for his own use and behoof forever. Said portions to be held by my said sons severally as fully as I myself could and would have done had I been then living and in like estate.

And I hereby further direct that until such division of my said estate shall be so made as aforesaid that my said trustees, the survivors and survivor of them, shall have full power, by and out of any monies which shall come to their hands under this my will, to pay from time to time all taxes, rates, and assessments taxed or to be taxed or charged on my said estate, real and personal, or either of same or any of same, and shall pay the same by and with such monies, anything to the contrary thereof hereinbefore or hereinafter notwithstanding. And my said trustees, the survivors and survivor of them, shall have power to rent all or any of my said real estate until such division and receive the rents thereof, which shall form a part of my estate out of which to pay the charges and other matters aforesaid.

And further, I hereby empower them to rent that portion of my said estate falling upon the division to my said son Henry Argue aforesaid until he shall attain the age of twenty-one years and apply the rents to the payment of taxes thereon. And I further empower my said trustees, the survivors and survivor of them, if they shall require monies for the support and education of my said son Henry Argue, to advance and pay the same out of my general estate until such division shall take place as aforesaid and thereafter to sell, if they shall require to do so, any portion or portions from time to time of that portion or share of my said estate falling to him as aforesaid wherewith to realize monies enough to pay taxes and assessments on his said share and support and maintain him until he shall attain the age of twenty-one years, and grant and make all necessary deeds or conveyances thereof to the purchaser or purchasers thereof in fee simple or otherwise as he, she, or they shall direct, anything hereinbefore set forth to the contrary.

And I do hereby further direct and declare and my will is that if any of my said sons shall die without issue and without having acquired a vested interest in my said estate that the share or shares of him or them so dying shall go and belong to the survivors or survivor of my said sons hereinbefore named, share and share alike if more than one, and if only one then the whole to such one to be conveyed and assured unto
482 them or him as the case may be as is provided hereinbefore for the conveyance or assurances of my said estate to them upon the division thereof aforesaid and to be held by them or him in like manner.

And I hereby further direct and declare and my will is that if my said wife shall elect to take the said annuity so provided for her as aforesaid in the way and manner aforesaid that upon her death my said trustees, the survivors or survivor of them or such other trustees so to be appointed as is hereinafter mentioned as aforesaid, as the case may be, shall invest in like manner as is hereinbefore provided for said monies the sum of twenty-three thousand three hundred and fifty dollars of the said monies from which said annuity to my said wife is to accrue and pay to my daughters Mary and Jane Ann, if they shall then be living free from the control of their husbands, the annual interest or produce of said sum of money, share and share alike during their respective lives, but so as that neither they nor their husbands shall have the power of anticipating in any way the same nor yet the power of disposition of same in any way their respective receipts, that is the receipts of my said daughters, respectively, being always a sufficient discharge to my said trustees for all moneys so to be paid to them, and upon the death of my said daughters or either of them leaving issue, then my will is that the annual interest or dividends which would have fallen to them or the one of them so dying shall be applied by my said trustees in and towards the support of such issue if minors or any of them are minors, and if all are of the age of twenty-one years or whensoever the youngest shall attain that age, to pay unto such issue if only one the whole and if more than one equally one-half of the said amount of monies so to be invested for the behoof of my said daughters if only one of my said daughters shall then be dead, but if both dead leaving issue such issue to be provided for as to maintenance and to become entitled to the other share in like way and manner aforesaid, it being my desire that the issue of each of my said daughters shall become entitled to the one-half of said amount so to be invested for the use of my said daughters as aforesaid.

And if both or either of them shall die without issue her surviving then the share of the one so dying or of both so dying shall go and belong to my said sons, share and share alike as aforesaid if more than one then living or if any dead leaving issue then to such issue, and if dead without issue then to the survivors or survivor of them.

And I do hereby further direct and declare and my will is that if any of my said sons shall die without having acquired a vested interest in my said estate as aforesaid and leaving issue such issue shall be entitled if only one child to the whole and if more than one child then equally of the share or portion of his father or their father so deceased under this
483 my will and as fully and effectually in all respects as if his, her, or their father had lived and so received the same.

And I hereby further direct and declare that if any of my trustees shall desire to be discharged from said trusts or shall die, or if any of them shall become incapable to act in the same from any cause, it shall be lawful to and for the others or other of them to appoint any person in their or his discretion to be a trustee or trustees in the room or place of such trustee or trustees so desiring to be discharged, or dying, or becoming incapable, and said trust estates, or such of same shall then be held in trust, shall "ipso facto" by such appointment become vested in such new trustee or trustees conjointly with such survivors or survivor, and so on, as often as any such new trustee shall desire to be dis-

charged, die, or become incapable, like appointment shall be made by the others with like effect, and such new trustees shall have all the powers, rights, and privileges as if they or he had been originally named herein.

And I further direct that my said trustees shall and may, out of any monies which shall come to their hands under this my will, pay and discharge all costs, charges, and expenses which they may be put unto in or about the execution of said trusts or any of same.

And I further direct and declare that my said trustees and the survivors and survivor of them shall be answerable and accountable for such monies only as he or they respectively shall actually receive by virtue of the trusts herein, notwithstanding their giving or signing receipts for the sake of conformity, and no further or otherwise, and they shall not, nor shall any of them, be answerable or accountable for the other or others of them, but each for his own acts and deeds only; nor shall any of them be answerable or accountable for any banker or broker or other person or body corporate with whom any of the said trust monies shall or may be deposited for safe custody or otherwise, nor for the insufficiency of any securities upon which said trust monies or any of same may be invested, nor for any stocks, nor for any other matter or thing in or about the execution of said trusts in respect of loss thereby, unless same is caused by their or his wilful neglect.

And I do hereby further declare and direct, and my will is, that if my said trustees shall find it convenient to set apart the hereinbeforementioned amount in money, whereby the said annuity to my wife is to arise from the interest thereof, they may and are hereby empowered to set apart a sufficient amount of real estate, in their judgment, of which the rents thereof shall be ample to meet and pay the said annuity to my said wife, or if they see fit to set apart sufficiency, in their judgment, of both real estate and monies, or securities, for the payment of monies.

And I hereby further direct and empower my said trustees to
484 sell and dispose of said real estate so set apart by them for the raising of said annuity, or any part of same, at any time or times they see fit, for the best price or prices which they can reasonably obtain for the same, and convey and assure the same to the purchaser or purchasers thereof in fee simple or otherwise, as he, she, or they may direct, and receive the purchase monies and grant all proper discharges for same, and invest all monies so accruing in the way and manner thereinbefore provided for the investing of monies under this my will, and collect the annual or other dividends or interest of same and pay the same to my said wife to the amount of three hundred and fifty pounds per annum, so as always that the total amount of said annuity shall be fourteen hundred dollars per annum, but so as also that if said investments and real estate should at any time or times not realize that amount that my trustees shall not be liable in any way to make up the deficiency not yet any other part of my estate, but if a deficiency should arise one year and a surplus the next or thereafter, my trustees may out of any such surplus make good any such deficiency, or as much thereof as they conveniently can.

And I further direct and declare that upon the death of my wife my trustees may either, in their discretion, then sell and dispose of any real estate then held by them for said annuity. And out of the monies so to

be received for same and other the monies from which said annuity in part or in whole arose, set apart and in'est the said sum of tw'nty-three thousand three hundred and fifty dollars for the benefit of my daughters and their children, as is hereinbefore set forth, if there shall be so much monies, or if not, then whatever there may be, or they may set apart real estate or real estate and monies to that amount, in their judgment, if there shall be so much, and if not, then whatever there may be, and all such real estate and monies to be divided amongst the issue of my said daughters, if any there shall be, in the way and manner and at the times hereinbefore provided for the payment of said amount to them, and failing issue of both or either of my said daughters my said sons to take share and share alike the portion of both, or the one so dying without issue, as the case may be.

And I do further direct and declare, and my will is, that if there shall be any surplus monies or real estate over and above the amount of twenty-three thousand three hundred and fifty dollars so to be set apart at the death of my wife as aforesaid, that all such surplus monies or real estate, or both, shall be equally divided to and amongst, and paid, conveyed, and assured unto my said sons, share and share alike, with succession of issue and otherwise as is hereinbefore provided in respect of the death of any of my sons.

And I do further direct and declare that my trustees for the
485 time being, acting in the execution of said trusts, shall have full power to make, sign, seal, and deliver all necessary and legal deeds, assurances, and conveyances in the law for the full and perfect conveying unto the purchaser or purchasers of any of my real or personal estate so purchased by him, her, or them, and that the receipt and receipts of my trustees aforesaid shall be an effectual discharge and discharges to every person paying money, and that parties so paying and the purchasers of any of my said estate shall not be bound to see to the application of said monies or be answerable or accountable for the misapplication or nonapplication of same, nor be bound to enquire into the necessity for my trustees making any such sale or sales.

I hereby declare that my real estate is situate in the Province of Canada and in the States of Illinois, Minnesota, and Wisconsin, three of the United States of America.

I nominate and appoint my said sons, James and John, and the said Colin D. Reid, executors of this will and guardians of my said son, Henry Argue.

In witness whereof, I, the said Thomas Stinson, have hereunto set my hand and seal this thirteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three.

(Signed) THOMAS STINSON. [L. S.]

Signed, sealed, published, and declared by the said Thomas Stinson, the testator, as and for his last will and testament, in presence of us, who, in his presence and in presence of each other, have subscribed our names as witnesses hereto.

(Signed) CHAS. M. COUNSELL.
CHARLES BROOKES.

Codicil to will of Thomas Stinson.

This is a codicil to the last will and testament of me, Thomas Stinson, of the city of Hamilton, in the Province of Canada, esquire, hereto annexed, namely:

Whereas in and by my said will I have provided that in case of the death of my son, Henry Argue, without issue or having acquired a vested interest in that portion of my estate falling to him by my said will, that the same should go and belong to my two sons, James and John: Now, I do hereby declare that in lieu of and in place and stead of such provision and direction to my trustees and in favor of my said last two named sons, that the following be substituted therefor and be taken and held as my will in respect of said portion of my said estate, namely, that in the event of my said son, Henry Argue, dying without issue or without having acquired a vested interest in my said estate so devised
486 to him as aforesaid, that the same shall be equally divided between my said two sons, James and John, and my two daughters, Mary and Jane Ann, and their heirs, and in respect of my said daughters, I declare that their respective shares of such said last division shall be held by my said trustees, for their benefit, in the same way and manner as is set forth in my said will for such part of my estate falling to them in and by my said will, reference being had to same for carrying out my said wishes in respect of this codicil. And I hereby confirm my said will in every other matter, particular, and thing.

In witness whereof, I, the said Thomas Stinson, have, to this codicil to my said will, set my hand and seal this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-four.

(Signed) THOMAS STINSON. [L. S.]

Signed, sealed, published, and declared by the testator, Thomas Stinson, as a codicil to his last will and testament, hereto annexed in our presence, who, in his presence and at his request and in presence of each other, have subscribed our names as witnesses hereto.

(Signed) CHAS. M. COUNSELL.
R. S. BROCK.

(Endorsed:) Copy of the will of Thomas Stinson, esqr.

Certificate of registrar.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth, ss:

I, Samson Howell Ghent, registrar of the surrogate court of the county of Wentworth aforesaid, do hereby certify that the foregoing paper writing contains a true copy or exemplification of the last will and testament of Thomas Stinson, late of Hamilton, Canada, deceased, and of the codicil to the said last will and testament; and also the paper next preceding the exemplification of the will is a copy or exemplification of the letters testamentary which were issued to James Stinson and John Stinson for the execution of the said will and codicil, which said will and codicil and record of the probate thereof remain in the said court. I

further certify that I am keeper of the records and files of said court, and that the said will and codicil were duly executed and proved agreeably to the laws and usages of the Province of Canada, now Province of Ontario, wherein the same were executed.

Given under my hand and seal of said court, at my office in Hamilton, this 13th day of September, A. D. 1886.

[L. S.] S. H. GHENT, *Registrar.*

(Ontario 50c. law stamp.)

487 *Certificate of judge.*

DIMINION OF CANADA,

Province of Ontario, county of Wentworth, ss:

I, James Shaw Sinclair, sole presiding judge of the surrogate court in and for the said county of Wentworth, do hereby certify that Samson Howell Ghent was, at the date of the foregoing certificate, registrar of said court and keeper of the records and seal of the same, duly appointed and qualified; that his said attestation is in due form and by the proper officer, and that the said will and codicil of Thomas Stinson were duly executed and proved agreeably to the laws and usages of the Province of Canada, now Province of Ontario, and that the above signature of said registrar is genuine.

Witness my hand and seal at Hamilton, in the said county of Wentworth, this 15th day of September, A. D. 1886.

[L. S.] J. S. SINCLAIR,

Judge of Her Majesty's Surrogate Court, in the County of Wentworth aforesaid.

Certificate of U. S. consul.

UNITED STATES CONSULATE,

Dominion of Canada, city of Hamilton, ss:

I, Albert Roberts, consul of the United States of America at Hamilton aforesaid, do hereby certify that Samson Howell Ghent, esq., who has signed one of the annexed and foregoing certificates, was at the time of signig the same, and is now, registrar of Her Majesty's surrogate court of the said county of Wentworth, which was and is a court having probate jurisdiction. I further certify that he is the keeper of the records of said court and the seal thereof, and that the seal affixed to said certificate is the seal of the said surrogate court, and the signature of the said Samson Howell Ghent is genuine. And I hereby further certify that James Shaw Sinclair, who hath signed the other of the foregoing certificates, is the presiding judge of the said surrogate court duly commissioned and qualified, and that his signature to said certificate is genuine, and that all acts so authorized (as the annexed and foregoing) are entitled to full credit in all courts of record or elsewhere.

Given under my hand and official seal, this seventeenth day of September, 1886.

[L. S.] ALBERT ROBERTS,

United States Consul, Hamilton, Ontario.

(Endorsed:) Copy of will of Thomas Stinson. Ex. C.

488 *Exemplification of probate of will of Henry Argue Stinson.*

In Her Majesty's surrogate court of the county of Wentworth.

Be it known that upon search being made in Her Majesty's surrogate court of the county of Wentworth it plainly appears that on the twentieth day of November, A. D. 1877, the last will and testament of Henry Argue Stinson, late of the city of Hamilton, in the county of Wentworth, gentleman, deceased, who died at the said city of Hamilton on or about the twenty-eighth day of October, A. D. 1877, and had, at the time of his death, a fixed place of abode at the city of Hamilton, in the said county of Wentworth, was proved by James Stinson, the executor therein named, and which said probate now remains of record in the said surrogate court. The true tenor of the said probate is in the words following, to wit:

In Her Majesty's surrogate court of the county of Wentworth.

Be it known that on the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-seven, the last will and testament of Henry Argue Stinson, late of the city of Hamilton, in the county of Wentworth and Province of Ontario, gentleman, deceased, who died on or about the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, at the city of Hamilton, in the county of Wentworth, and who, at the time of his death, had a fixed place of abode at the city of Hamilton, in the said county of Wentworth, was proved and registered in the said surrogate court, a true copy of which said last will and testament is hereunto annexed, and that the administrator of all and singular the personal estate and effects, rights, and credits of the said deceased, and any way concerning his will, was granted by the aforesaid court to James Stinson, of the city of Chicago, in the State of Illinois, one of the United States of America, esquire, the executor named in the said will, he having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in his will, so far as thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, rights, and credits, and to render a just and true account of his executorship whenever required by law.

[L. S.]

S. H. GHENT,
Registrar said Court.

489 This is the last will and testament of me, Henry Argue Stinson, of the city of Hamilton, in the county of Wentworth, gentleman.

I give, devise, and bequeath unto my brother, James Stinson, of the city of Chicago, esquire, his heirs, executors, administrators, and assigns, according to the nature and tenure thereof, all my real and personal estate whatsoever and wheresoever, and whether lying and being in Canada or in the United States of America. And I appoint the said James Stinson sole executor of this my will. In witness whereof I have hereunto set my hand and seal this nineteenth day of August, in the year of our Lord one thousand eight hundred and seventy-five.

H. A. STINSON. [L. S.]

Signed, sealed, and declared by me, the said testator, as and for my last will and testament in the presence of us who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

(Signed) A. P. SPOHN.
" WM. AMBROSE.

In faith and testimony whereof these letters testimonial are issued.

Given at the city of Hamilton, in the county of Wentworth, and Province of Ontario, as to the time of the aforesaid search and the sealing of these presents, this twenty-third day of November, A. D. 1877.

[L. S.] S. H. GHENT,
Registrar said Court.

(50c. Ontario law stamp, Nov. 23, 1877.)

(Endorsed:) Exemplification of probate of the will of Henry Argue Stinson, gentleman. D. 145.

Certificate of registrar.

DOMINION OF CANADA,
Province of Ontario, county of Wentworth, ss:

I, Samuel Howell Ghent, registrar of Her Majesty's surrogate court of the county of Wentworth aforesaid, do hereby certify that the foregoing exemplification contains a true and full copy of the last will and testament of Henry Argue Stinson; that said last will and testament was proved and registered in the said surrogate court, and the said exemplification contains, together with a copy of said will, a transcript of the probate thereof in and before the said court, and that I am keeper of the records and files of said court, including the said will. And I further certify that the said will was executed and proved according to the laws of said Province of Ontario.

490 Given under my hand and the seal of said court, at Hamilton, this 13th day of September, A. D. 1886.

[L. S.] S. H. GHENT,
Registrar.

(50c. Ontario law stamp.)

Certificate of judge.

DOMINION OF CANADA,
Province of Ontario, county of Wentworth, ss:

I, James Shaw Sinclair, presiding judge of Her Majesty's surrogate court in and for said county of Wentworth, do hereby certify that Samson Howell Ghent, esq., whose name appears signed to the foregoing certificate, was, at the time of signing the same, and is now, registrar of said surrogate court of the county of Wentworth, duly commissioned and qualified; that said court is a court of record, having a registrar and seal; that said attestation is in due form and by the proper officer, and that the foregoing signature of said registrar to said certificate is genuine.

Witness my hand and seal at Hamilton, in the said county of Wentworth, this 15th day of September, A. D. 1886.

[L. S.]

J. S. SINCLAIR,
Judge of Her Majesty's Surrogate Court in the Co. of Wentworth aforesaid.

Certificate of U. S. consul.

UNITED STATES CONSULATE,
Dominion of Canada, city of Hamilton, ss:

I, Albert Roberts, consul of the United States of America at Hamilton aforesaid, do hereby certify that Samson Howell Ghent, esq., who has signed one of the annexed and foregoing certificates, was at the time of signing the same, and is now, registrar of Her Majesty's surrogate court of the said county of Wentworth, which was and is a court having probate jurisdiction. I further certify that he is the keeper of the records of said court and the seal thereof, and that the seal affixed to said certificate is the seal of the said surrogate court, and the signature of the said Samson Howell Ghent is genuine. And I hereby further certify that James Shaw Sinclair, who hath signed the other of the foregoing certificates, is the presiding judge of the said surrogate court, duly commissioned and qualified, and that his signature to said certificate is
491 genuine, and that all acts so authenticated (as the annexed and foregoing) are entitled to full credit in all court of record or elsewhere.

Given under my hand and official seal this seventeenth day of September, 1886.

[L. S.]

ALBERT ROBERTS,
United States Consul, Hamilton, Ontario.

(Endorsed:) Will of Henry Argue Stinson. Ex. E.

Letters testamentary.

In Her Majesty's surrogate court, of the county of Wentworth.

Be it known that on the eleventh day of July, in the year of our Lord one thousand eight hundred and seventy-four, the last will and testament of John Stinson, late of the township of Barton, in the county of Wentworth, esquire, who died on or about the twenty-eighth day of June in the year of our Lord one thousand eight hundred and sixty-five, at the township of Barton aforesaid, and who at the time of his death had a fixed place of abode at the township of Barton, in the said county of Wentworth, was proved and registered in the said surrogate court, a true copy of which said last will and testament is hereunder written, and that the administration of all and singular the personal estate and effects, rights and credits of the said deceased, and any way concerning his will was granted by the aforesaid court to James Stinson, of the city of Chicago, in the State of Illinois, esquire, and Charles Matthew Counsell, of the city of Hamilton, in the county of Wentworth, esquire, the executors named in the said will, they having been first sworn well and faithfully

to administer the same by paying the just debts of the deceased, and the legacies contained in his will, so far as they are thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, rights and credits, and to render a just and true account of their executorship whenever required by law so to do.

[L. S.] GEO. ROLPH, *Registrar said Court.*
R. G. DAMPIER, *Asst. Registrar.*

($2.50 in Ontario law stamps, "Jul. 11, 1874.")

Will of John Stinson.

This is the last will and testament of me, John Stinson, of the city of Hamilton, in the county of Wentworth, in the province of Canada, esquire.

I give, devise, and bequeath to my dear wife, Emma Caroline, all the pictures, prints, books, plate, linen, china, pianoforte, wines, 492 liquors, provisions, household goods, furniture, horses, carriages, harness, cows, chattels, and effects (other than money or securities for money), which shall at my death be in or about my dwelling house in the township of Barton, or the outbuildings or grounds thereof.

All the rest, residue, and remainder of my personal estate and effects, of what nature or kind soever, not hereinbefore beque'thed, and all my real estate whatsoever and wheresoever, I give, devise, and bequeath unto my brother, James Stinson, and my brother-in-law, Charles Matthew Counsel, as joint tenants, their heirs, executors, administrators or assigns, upon the trusts following—that is to say, upon trusts that they, my said trustees or the survivor of them, or the heirs, executors, or administrators or assigns of such survivor of them, do, and shall at their discretion and as they may think best after my decease call in and sell and convert into money the said residue of my personal estate, and do and shall at their discretion at such times, and as they may think best, sell and dispose of all or any portion of my real estate, either altogether or in parcels, by public auction or private sale, and until such sale, lease any part or portion of my said real estate for such rents and for such terms and periods as they may think best. And with and out of the monies to arise by such sales of my real or personal estate, do and shall in the first place pay and satisfy all my just debts, funeral, and testamentary expenses, and do and shall in the next place lay out and invest the monies which shall arise by such sales as aforesaid in their, her, or his name or names at interest either in good bank-stock debentures and mortgages and real securities as they may think best, and do and shall pay the interest, dividends, and annual produce of the said trust monies, funds, and securities, and also the rents, issues, and profits of my real estate, which shall from time to time remain unsold unto or permit my said wife or her assigns to receive the same for and during the period of her natural life. And after her death shall hold the said monies, stock, funds, securities, and real estate unsold in trust for all my children or any my child, who being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one, in equal shares.

And do and shall after the death of my said wife and during the suspense of absolute vesting of such trust estate in my child or children

apply the annual income under the trusts hereinbefore declared for or toward the maintenance or support or education of such child or children.

And *if* there shall be no child of mine living at my death, who being a son shall attain the age of twenty-one years, or being a daughter
493 shall attain that age or marry, then after the death of my said wife and such default or failure of children, I bequeath the said trust monies, stocks, funds, shares, securities, and real estate in equal portions unto my brothers, James and Henry Argue, or the survivor of them and the children of such as shall be dead, the children of such as shall be deceased to take equally among them the share their father would have taken had he been living.

Provided always as to my real estate, which consists of my dwelling house in which I now reside on Burlington street in the township of Barton and the acre of ground upon which the same is built, it shall be in the discretion of my said executors and trustees, and if my said wife should desire it, to allow my said wife to live and remain in the same as a house and home for her during the term of her natural life.

And I do will and declare that during the continuance of my said trust estate my said trustees shall have full power from time to time, as they shall think proper, to alter and vary the said stocks, funds, and securities for others of a like kind.

And I declare that the trustees or trustee for the time being of this my will shall not be liable to answer or make good any losses that shall happen in the execution of the trusts, &c., mentioned in this my will, unless the same shall happen by or through their or his own wilful neglect or default, nor shall any or either of them, my said trustees, be answerable or accountable for the acts, deeds, receipts, and disbursements of the other of them. And I do hereby direct that my said trustees shall and may pay and reimburse themselves and himself out of my estate all reasonable and necessary costs, charges, and expenses which they may pay or sustain about the execution of this my will and the trusts thereby created.

I declare that the provisions hereby made for my said wife shall be accepted by her in full satisfaction of her claim to dower out of any real estate of which I have been or now am or shall be seized.

And I do lastly appoint the said James Stinson and Charles Matthew Counsel, executors, and trustees of this my last will and testament, and I appoint my said wife and the said James Stinson and Charles Matthew Counsel guardians of my infant children.

In witness whereof I, the said John Stinson, have hereunto set my hand and seal this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and sixty-four.

JOHN STINSON. [L. S.]

Signed and sealed by the above-named John Stinson as and for his last will and testament in the presence of us, present at the same
494 time, who in his presence and in the presence of each other have hereunto subscribed our names as attesting witnesses thereto.

(Signed) JNO. EASTWOOD.
" WM. AMBROSE.

GEO. ROLPH, *Registrar.*
R. G. DAMPIER, *Assist. Registrar.*

Certificate of registrar.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth, ss:

I, Samson Howell Ghent, registrar of the surrogate court in and for said county, do hereby certify that the foregoing writing embraces the letters testamentary which were issued from said court to James Stinson and Charles Matthew Counsell, as executors of the last will and testament of John Stinson, late of the township of Barton, in the said county of Wentworth, deceased; and also contains a true copy or exemplification of said last will and testament as the same appears on file in the said court, and which said last will and testament was duly executed and approved agreeably to the laws and usages of the said province of Ontario. I further certify that I am the keeper of the records and files of the said court.

Given under my hand and the seal of said court at Hamilton, in the said county, this 13th day of September, A. D. 1886.

[L. S.] S. H. GHENT, *Registrar.*

(50c. Ontario law stamp.)

Certificate of judge.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth, ss:

I, James Shaw Sinclair, the presiding judge of the surrogate court in and for the said county of Wentworth, do hereby certify that the foregoing certificate by Samson Howell Ghent, esq., is in due form and by the proper officer, whose genuine signature is attached to the said certificate, and that the said Samson Howell Ghent was at the date of said certificate and still is the registrar of said court and keeper of the records and seal thereof. I further certify that the said will was duly executed and proved according to the laws and usages of the said province.

495 Witness my hand and seal this 15th day of September, A. D. 1886.

[L. S.] J. S. SINCLAIR,
Judge of Her Majesty's Surrogate Court in and for said county of Wentworth.

Certificate of U. S. consul.

UNITED STATES CONSULATE,
Dominion of Canada, City of Hamilton, ss:

I, Albert Roberts, consul of the United States of America at Hamilton aforesaid, do hereby certify that Samson Howell Ghent, esq., who has signed one of the annexed and foregoing certificates, was at the time of signing the same, and is now, registrar of Her Majesty's surrogate court of the said county of Wentworth, which was and is a court having probate jurisdiction. I further certify that he is the keeper of the records of said court and the seal thereof, and that the seal affixed to said certificate is the seal of the said surrogate court, and the signature of the said

Samson Howell Ghent is genuine. And I hereby further certify that James Shaw Sinclair, who hath signed the other of the foregoing certificates, is the presiding judge of the said surrogate court, duly commissioned and qualified, and that his signature to said certificate is genuine and that all acts so authenticated (as the annexed and foregoing) are entitled to full credit in all courts of record or elsewhere.

Given under my hand and official seal this seventeenth day of September, 1886.

[L. S.]

ALBERT ROBERTS,
United States Consul, Hamilton, Ontario.

(Endorsed:) Probate of the will of John Stinson. Ex. D.

496 *Allotment by master, pursuant to decree of April 30, 1873.*

Filed 17 Feby., 1874. In chancery.

In the matter of the estate of Thomas Stinson, late of the city of Hamilton, in the county of Wentworth, deceased.

THOMAS STINSON AND MARION STINSON, infants under the age of twenty-one years, by William McGiverin, their stepfather and next friend,
against
JAMES STINSON AND CHARLES M. COUNSELL.

Pursuant to the decree on further directions herein, dated the thirtieth day of April, A. D. 1873, I have, after hearing the evidence of Alexander Bruce, John Morison Gibson, and Charles Matthew Counsell, in the said decree mentioned, who, pursuant to such decree, have proceeded to inspect the lands and leasehold property of the estate and otherwise taken means necessary to enable them to form a judgment upon and arrive at a satisfactory valuation of the several and respective parcels of land and leasehold property, which were of said Thomas Stinson remaining unsold or undisposed of, and being attended by the solicitors for the said infants, and for the said James Stinson and Charles M. Counsell, and for Henry Argue Stinson, in the said decree named, proceeded to make a division of the real estate and leasehold property of the said Thomas Stinson into three portions as nearly equal as possible; and have allotted one such portion to the said infants, Thomas Stinson and Marion Stinson, being the several parcels or tracts of lands and premises mentioned in the first schedule hereto annexed, and in such schedule I have set opposite to such several and respective parcels the valuations placed by me on the same, respectively.

And I have allotted another of such portions to the said James Stinson, being the several parcels or tracts of lands and premises mentioned in the second schedule hereto annexed, and in such schedule I have set opposite to such several and respective parcels the valuations placed by me on the same, respectively.

And I have allotted another of such portions to the said Henry Argue Stinson, being the several parcels or tracts of lands and premises mentioned in the third schedule hereto annexed, and in such schedule I have

set opposite to such several and respective parcels the valuations placed by me on the same, respectively.

And the following is a summary of the result of such several allotments, viz:

497 To the infants, Thomas Stinson and Marion Stinson:

Lands in the city of Hamilton and township of Barton (value in gold)		$52,550.00
Lands in the city of Chicago (value in American currency)	$71,000.00	
Lands in the State of Minnesota (value in American currency)	$148,471.00	
Lands in the State of Wisconsin (value in American currency)	$10,033.00	
		229,504.00

To the said James Stinson:

Lands in the city of Hamilton and township of Barton (value in gold)		$52,550.00
Lands in the city of Chicago (value in American currency)	$70,250.00	
Lands in the State of Minnesota (value in American currency)	$149,250.00	
Lands in the State of Wisconsin (value in American currency)	$10,024.24	229,524.24

(L. S.)

To the said Henry Argue Stinson:

Lands in the city of Hamilton and township of Barton (value in gold)		$52,550.00
Lands in the city of Chicago (value in American currency)	$70,000.00	
Lands in the State of Minnesota (value in American currency)	$148,830.00	
Lands in the State of Wisconsin (value in American currency)	$10,025.00	
		228,855.00

All which I humbly certify and submit to this honorable court.

Dated this 16th day of February, 1874.

[L. S.]

(Sd.) M. O'REILLY,
Master at Hamilton.

498 First schedule referred to in the foregoing report, being a list of the several lands allotted to the infants, Thomas Stinson and Marion Stinson.

Property in the city of Hamilton and in the township of Barton, in the county of Wentworth, in the Province of Ontario.

1. Lot 30, on the south side of King William street, between James and Hughson streets, and the north halves of lots 31 and 32, at the southeast corner of James street and King William street, in Hamilton (leasehold estate)..... $34,000.00

2. Lots 17, 18, 19, 20, and 21, on East Market street, in the testator's subdivision of lot 4, in Michael Aikman's survey of part of lot 10, in the 2nd concession of Barton... 1,000.00

3. Lots 71, 72, 74, 75, 78, 83, and 84, on Wilson street, in the testator's survey of part of lot No. 11, in the 2nd concession of Barton (now in Hamilton) $1,450.00

4. Lots 33, 34, 35, 36, 37, 38, and 39, in the testator's subdivision of lot 4, in Michael Aikman's survey of part of lot 10, in the 2nd concession of Barton..... 1,400.00

5. Lots 2 and 3, on King William street (north side), between Mary street and Ferguson avenue, in the testator's survey of city lots..... 1,200.00

6. Lot 10, on East Market street, in the testator's subdivision of lot 4, in Michael Aikman's survey of part of lot 10, in the 2nd concession of Barton 500.00

7. Lots 60 and 61, on Nightingale street, in the testator's survey, in the city of Hamilton..... 500.00

8. A parcel of land in the city of Hamilton, bounded on the north by King street, on the east by Victoria avenue, extending 382 feet on King street, and extending south to an alleyway, containing seven double two-story frame houses on King street, and three small frame houses on Victoria avenue 10,000.00

9. Lots 52, 53, 54, fronting on Nightingale street, and 76, 77, 85, and 86, on Wilson street, being part of lot 11 in the 2nd concession of Barton (now in Hamilton), in the testator's survey..... 1,300.00

10. Lots 19, 20, 21, and 22, on Burlington street, in the testator's survey of part of lot 10, in 3rd concession of Barton 1,200.00

$52,550.00

499 In the State of Minnesota.

Property in St. Paul.

11. The undivided half of 18 acres, being the southeast half of the southwest quarter of the southwest quarter of section 1, town 28, range 22 (except 2 acres sold off the southeast corner)..... $16,800.00

12. Block 36, in Stinson, Brown & Ramsay's addition.. 1,650.00

13. Block 37, in Stinson, Brown & Ramsay's addition.. 1,650.00

14. Block 38, in Stinson, Brown & Ramsay's addition.. 1,900.00

15. The undivided six-eighths of Block 16, Stinson, Brown & Ramsay's addition less parts previously sold..... 20,625.00

16. Block 27, Stinson, Brown & Ramsay's addition.... 12,500.00

17. East half of block 8, Stinson, Brown & Ramsay's addition 3,850.00

18. Block 22, Stinson, Brown & Ramsay's addition 7,400.00

19. Lots 22, 23, and 25, in block 29, Stinson, Brown & Ramsay's addition, at $175 each..... 525.00

Forward..... $66,900.00

[L. S.]

Brought forward	$66,900.00
20. Lots 6, 11, 12, 14, and 15, in block 29, Stinson, Brown & Ramsay's addition, at $60 each	300.00
21. Lots 74 and 75, in block 28, Stinson, Brown & Ramsay's addition, at $210	420.00
22. Lots 67 and 77, on block 28, Stinson, Brown & Ramsay's addition, at $210	420.00
23. Lot 28, in block 29, Stinson, Brown & Ramsay's addition, at $75	75.00

Property in Ramsey County.

24. Southwest quarter (160 acres) of section 12, town 28, range 22, at $65	10,400.00
25. East half of southwest quarter (80 acres), section 2, town 29, range 22, at $12	960.00
26. Southeast quarter of northwest quarter (40 acres) of section 2, town 29, range 22, at $12	480.00
27. Northwest quarter of southeast quarter (40 acres), section 12, town 29, range 22, at $12	480.00
28. East half of northwest quarter (80 acres) of section 24, town 29, range 22, at $50	4,000.00
500 29. Northeast quarter of southwest quarter (40 acres) of section 24, town 29, range 22, at $50	2,000.00
30. Block 34, Arlington Heights	5,500.00
Block 35, Arlington Heights	6,000.00
Block 47, Arlington Heights	2,000.00
31. Southeast quarter of northwest quarter of section 34, town 29, range 22 (40 acres), at $225	9,000.00
32. Northeast quarter of northwest quarter of southeast quarter of section 3, town 28, range 23 (10 acres), at $675	6,750.00
33. Southwest quarter of northwest quarter of northeast quarter of section 10, town 28, range 23 (10 acres), at $400	4,000.00
34. West half of northeast quarter of section 26, town 30, range 23 (80 acres), at $8	640.00
35. Southwest quarter of northeast quarter of section 14, town 29, range 23 (40 acres), at $100	4,000.00
36. South half of southwest quarter of section 9, town 29, range 23 (80 acres), at $45	3,600.00
36a. An undivided one-third of block No. 2 of McKinty's out lots	1,000.00

Property in Hennepin County.

37. Southwest quarter of southwest quarter of section 18, town 29, range 23, less 5 acres off the south (35 acres), at $100	3,500.00
38. South half of northwest quarter of southwest quarter, section 18, town 29, range 23 (20 acres), at $100	2,000.00

Washington County.

39. Southwest quarter of northwest quarter of section 6, town 29, range 21		$2,000.00
40. Southeast quarter of northwest quarter of section 6, town 29, range 21		2,000.00
41. Southeast quarter of northeast quarter of section 8, town 29, range 21		2,000.00
42. North half of southeast quarter of section 8, town 29, range 21		4,000.00
43. Northwest quarter of northeast quarter of section 4, town 29, range 20		250.00
Forward		$144,675.00
[L. S.]		
501 Brought forward		$144,675.00
44. Lot 2, of section 5, town 31, range 20		25.00
45. Lots 2 and 3, of section 17, town 31, range 20		240.00
46. Lot 1, of section 26, town 31, range 20		185.00
47. Lot 1, of section 11, town 32, range 21		102.00
48. Lot 1, of section 12, town 32, range 21		210.00
49. Lots 1 and 2, of section 24, town 32, range 21		312.00
50. Northwest quarter of northwest quarter of section 14, town 32, range 20		120.00
51. Lot 4, of section 27, town 32, range 20		278.00
52. Lot 1, of section 34, town 32, range 20		180.00
53. Lots 5 and 6, of section 33, town 32, range 2		474.00
54. Lots 5 and 6, of section 31, town 32, range 20		270.00

Chisago County.

56. West half of southwest quarter of section 15, town 33, range 19		400.00
57. Northeast quarter of southwest quarter of section 28, town 33, range 19		200.00
58. Southeast quarter of section 34, town 34, range 19.		800.00
		$148,471.00

Chicago Property.

59. Sublots 51, 56, 57, 62, and 63, on Jefferson street in lot 1, block 38, southwest quarter section 21, town 39, range 14, at $1,800 each	9,000.00	
60. Sub lots 61 and 64, on String street in lot 1, block, 38, SW. ¼, section 21, town 39, range 14, at $1,200 each	2,400.00	11,400.00
61. Lots 84 and 85, in block 17, section 19, town 39, range 14, at $850	1,700.00	
62. Lots 38 and 39, in block 32, section 19, town 39, range 14, at $850	1,700.00	

63. Lots 67, 68, 69, 70, and 71, in block 31, section 19, town 39, range 14, at $700 each.	$3,500.00	
64. Lot 76, block 31, section 19, town 39, range 14	650.00	
65. Lots 77, 78, 79, 80, 81, and 82, block 31, section 19, town 39, range 14, at $550 each.	3,300.00	
		10,850.00
502 66. Lots 8, 9, 10, and 11, in block 49, section 19, town 39, range 14, on Ashland avenue	6,350.00	
67. Lots 12, 13, 14, 15, 16, 17, and 18, in block 49, section 19, town 39, range 14	5,950.00	
68. Lots 36, 37, 38, 39, and 40, block 49, section 19, town 39, range 14	4,250.00	
68a. Lot 80, block 16, section 19, town 39, range 14	1,000.00	
In blocks 1, 2, and 10, section 31, town 39, range 14:		
69. Lot 14 and south half 15 and lot 16, original survey	3,700.00	
70. Lot 39, original survey	3,100.00	
71. Lot 42 .....do	3,000.00	
72. Lots 6, 7, 8, 9, and 10, new survey	4,000.00	
73. Lots 10, 16, 17, 18, 19, and 20, new survey	4,500.00	
74. Lots 33, 34, and 35, new survey	2,400.00	
75. Lots 69, 70, and 71, new survey	2,250.00	
		$22,250.00
Forward	$40,500.00	
[L. S.]		
Brought forward	$40,500.00	$22,250.00
76. Lots 39, 40, and 41, new survey	2,250.00	
77. Lots 56, 57, 58, 59, 60, and 61, new survey	6,000.00	
		48,750.00
		$71,000.00

503 State of Wisconsin.

In Douglas County.

Infants Thos. and Marion Stinson:	
78. Northeast quarter section 6, town 48, range 13	$1,600.00
79. Northeast quarter section 4, town 48, range 13	1,280.00
80. Northwest quarter section 1, town 48, range 14	1,280.00
81. Southwest quarter section 35, town 49, range 14	1,440.00
82. Northwest quarter of southeast quarter in section 36, town 49, range 14	800.00
83. 13-16ths of Lot 1 in section 36, town 49, range 14	440.00

84. Northwest quarter of northeast quarter of section 1, town 48, range 14	$400.00
85. Lots 1, 2, and 3, in section 2, town 49, range 11	248.00
86. Lots 1, 2, and 3, in section 30, town 49, range 11	270.00
87. Lot 3 in section 31, town 49, range 12	150.00
88. Lot 4 in section 31, town 49, range 12	164.00
89. Lots 1, 2, and 3, in section 33, town 49, range 12	266.00
90. Lots 1 and 2, in section 36, town 49, range 12	170.00
91. South half of northwest quarter of section 16, town 48, range 12	100.00
92. North half of southwest quarter of section 16, town 48, range 12	100.00
93. South half of section 18, town 47, range 14	400.00
94. West half of west half of section 30, town 47, range 14.	200.00
	$9,308.00

Superior city.

95. Lots 146 and 260, west First street	200.00
96. Lot 297, Fourth street	125.00
97. Lots 1, 8, 9, and 10, Quebec pier	350.00
98. Lots 300, 302, 304, 306, 308, 310, 312, 307, 309, 311, on River street, at $5 each	50.00
	$10,033.00

[L. S.]

504 Second schedule referred to in the foregoing report being a list of the several lands allotted to the within-named James Stinson.

Property in the city of Hamilton and in the township of Barton, in the county of Wentworth, in the province of Ontario.

1. Part of city lot number 7, on the north side of King street, and between John street and Hughson street, known as the Webber & Beveridge stores, Hamilton	$14,000.00
2. The westerly part of lot No. 7, and the easterly part of lot No. 8 on the south side of King street, between John and Catherine streets, being 35 feet 8 inches wide, and extending from King street southward to the alley on which are erected two three-story buildings, occupied by John McPherson & Co., in Hamilton	9,000.00
3. Lots numbers 1, 2, 4, 5, 6, 7, 8, 10, and 11, fronting on King street, Hamilton, being part of lot No. 11, in the second concession of Barton, in the testator's survey of lots made by Messrs. Blythe & Kerr	5,200.00
4. Town lots 14 and 15, on the northwest corner of Main and Margaret streets, in Hamilton, in the survey of the testator made by Thomas Allen Blythe	400.00
5. Town lots 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64, on Ida street and Burris street, in Hamilton, in the survey of the testator of part of lot 10, in the 3rd concession of Barton	2,400.00

6. Lots 1, 2, 3, 4, 5, 6, and 7, north side of King street, in the testator's subdivision of lot No. 4, in Michael Aikman's survey of part of lot No. 10, in the 2nd concession of Barton $4,200.00

7. Lots 3, 4, 7, 8, 9, and 10, fronting on Main street, in the testator's survey of part of lot 10, in the 3rd concession of Barton 2,500.00

8. Lots 11, 12, 13, 14, 15, and 16, in the testator's subdivision of lot 4, in Michael Aikman's survey of part of lot 10, in the 2nd concession of Barton 1,200.00

9. Lots 23 and 24, on Ida street, in the testator's survey of part of lot 10, in the 3rd concession of Barton 600.00

10. Lots 88 and 91, on Wilson street, in testator's survey of part of lot 11, in the 2nd concession of Barton, in Hamilton 400.00

11. Lot 47 on Argue street, in testator's survey of part of lot 10, in the 3rd concession of Barton 150.00

505 12. Part of the north half of lots 37 and 38, on the northeast corner of King William street and Hughson street in Hamilton, 6 wooden tenements thereon..... 3,000.00

13. Part of town lot 29, on the west side of Hughson street, between King street and King William street, in Hamilton, having a frontage of about 44 feet and 7 inches on Hughson street, and a depth of about 79 feet, with two stone buildings thereon..... 6,000.00

14. Lots 43, 44, 45, 46, 47, 48, 49, 57, 58, 59, and 64 fronting on Nightingale street, in Hamilton, being in the testator's survey of part of lot 11 in the 2nd concession of Barton 3,500.00

$52,550.00

State of Minnesota.

St. Paul property.

15. The undivided half of lot 5, section 6, town 28, range 22, and the undivided half of lot 1, section 7, town 28, range 22 ..... $22,000.00

16. Block 3 in Stinson, Brown & Ramsay's addition.... 20,000.00

17. Block 10 in Stinson, Brown & Ramsay's addition... 11,520.00

18. Block 20 in Stinson, Brown & Ramsay's addition... 8,800.00

19. Block 34 in Stinson, Brown & Ramsay's addition... 4,200.00

20. Lots 7, 8, 9, and 10 in Rondo's addition, at $75.... 300.00

Forward $66,820.00

[L. S.]

Brought forward..... $66,820.00

21. Lots 18 and 19, block 28, in Stinson, Brown & Ramsay's addition, at $210..... 420.00

22. Lots 23 and 26, block 28, in Stinson, Brown & Ramsay's addition, at $210..... 420.00

23. Lot 19, block 29, in Stinson, Brown & Ramsay's addition 125.00

Property in Ramsay County.

24. South half of northeast quarter of section 11, town 28, range 22, 80 acres, at $85	$6,800.00
25. West half of southeast quarter of section 12, town 28, range 22, 80 acres, at $65	5,200.00
26. Southeast quarter of southeast quarter of section 12, town 28, range 22, 40 acres, at $65	2,600.00
506 27. South half of northeast quarter of section 2, town 29, range 22, 80 acres, at $12	960.00
28. West half of northwest quarter of section 24, town 29, range 22, 80 acres, at $50	4,000.00
29. Northwest quarter of southwest quarter of section 24, town 29, range 22, 40 acres, at $50	2,000.00
30. Block 44, Arlington Heights, section 29	3,000.00
31. Block 45, Arlington Heights, section 29	3,000.00
32. Block 46, Arlington Heights, section 29	6,500.00
33. Block 50, Arlington Heights, section 29	1,000.00
34. Northwest quarter of northwest quarter of section 30, town 20, range 22, 34 90—100 acres, at $200	7,000.00
35. South half of northwest quarter of southeast quarter of section 3, town 28, range 23, 20 acres, at $525	10,500.00
36. East half of northeast quarter of section 26, town 30, range 23, 80 acres, at $8	640.00
37. Southeast quarter of northeast quarter of section 14, town 29, range 23, 40 acres, at $100	4,000.00
38. East half of northeast quarter of northeast quarter of section 14, town 29, range 23, 20 acres, at $100	2,000.00
39. An undivided one-third of block No. 2 of McKinty's out lots	1,000.00

Property in Hennepin County.

40. Northeast quarter of southeast quarter of section 13, town 29, range 24, 40 acres, at $100	4,000.00
41. North half southeast quarter southeast quarter of section 13, town 29, range 24, 20 acres, at $100	2,000.00
42. Southeast quarter southeast quarter southeast quarter of section 13, town 29, range 24, 10 acres, at $100	1,000.00

Washington County.

43. East half of southwest quarter of section 6, town 29, range 21	4,000.00
44. South half southeast quarter of section 8, town 29, range 21	4,000.00
45. Northwest quarter of northwest quarter of section 30, town 32, range 19	400.00
46. Southeast quarter of southwest quarter of section 3, town 31, range 20	240.00

507	47. Lot 1, section 4, town 31, range 20	$225.00
	48. East half of northwest quarter of section 4, town 31, range 20	450.00
	Forward	$144,300.00
[L. S.]		
	Brought forward	$144,300.00
	49. Northeast quarter of southwest quarter of section 4, town 31, range 20	240.00
	50. Lot 1 of section 10, town 31, range 20	350.00
	51. Lot 3 of section 8, town 31, range 20	185.00
	52. West half of northeast quarter of section 10, town 31, range 20	480.00
	53. Lots 1, 2, 3, and 4, in section 13, town 32, range 21	336.00
	54. Lot 4 in section 14, town 32, range 21	120.00
	55. Lot 1 in section 23, town 32, range 21	108.00
	56. Southeast quarter of southwest quarter of section 11, town 32, range 20	120.00
	57. Lots 4 and 5, section 21, town 32, range 20	440.00
	58. Lot 4, section 31, town 32, range 20	333.00
	59. Lot 5, section 29, town 32, range 20	29.00
	60. Lots 6 and 7, section 29, town 32, range 20	38.00
	61. Lots 1 and 2, section 30, town 32, range 20	486.00
	Chisago County.	
	62. Lot 3, section 5, town 33, range 20, lots 3, 4, and 5, section 8, town 33, range 20	760.00
	63. Lots 3 and 4, section 23, town 34, range 19	325.00
	64. West half of southwest quarter of section 28, town 33, range 19	400.00
	65. Southeast quarter of southwest quarter of section 34, town 34, range 19	200.00
		$149,250.00
	Chicago property.	
	Lot 1 in block 38 in SW. ¼ and so much of SE. ¼ of section 21 as lies east of Chicago River.	
	Town 39, range 14.	
	66. Sub lots 26, 27, 32, and 33, on Jefferson street, at $1,800 each $7,200.00	
	67. Sub lots 59 and 60, in String street, at $1,200 2,400.00	
		$9,600.00
508	The following lots in blocks 15, 17, 31, and 32, in section 19, town 39, range 14:	
	68. Lots 28 and 29, block 17, Ashland avenue, at $1,800 3,600.00	
	69. Lot 30, block 17, Ashland avenue 2,250.00	

70.	Lot 16, block 15, Sampson street	$850.00	
71.	Lots 57, 58, 59, 60, and 61, block 31, Sampson street, at $700 each	3,500.00	
72.	Lots 90, 91, 92, 93, 94, 95, and 96, block 31, Sampson street, at $550.....	3,850.00	
			$14,050.00
	Block 49, section 19, town 39, range 14:		
73.	Lots 5, 6, and 7, in Ashland avenue....	4,500.00	
74.	Lots 24, 25, 26, 27, and 28, at $850; and lot 29, at $1,000.....	5,250.00	
75.	Lots 41, 42, 43, 44, 45, 46, 47, at $850	5,950.00	
			15,700.00
76.	Lot 81, block 16, section 19, town 39, range 14.....	1,000.00	
	In blocks 1, 2, and 10, section 31 town 39, range 14 according to original survey:		
77.	Lot 8.....	2,000.00	
78.	Lot 9.....	1,000.00	
79.	Lot 13.....	1,200.00	
	Forward.....	$5,200.00	$39,350.00
[L. S.]			
	Brought forward.....	$5,200.00	$39,350.00
80.	Lot 17.....	2,600.00	
81.	East half of lot 38.....	1,600.00	
82.	Lot 43.....	1,500.00	
83.	Lot 44.....	1,750.00	
	According to new survey:		
84.	Lots 11, 12, 13, and 14.....	3,200.00	
85.	Lots 26, 27, 28, and 29, at $650	2,600.00	
86.	Lots 62, 63, and 64.....	2,750.00	
87.	Lots 72, 73, and 74.....	2,000.00	
88.	Lot 45.....	1,200.00	
509 89.	Lots 42 and 43	1,500.00	
90.	Lots 46, 47, 48, 49, and 50, at $1,000	5,000.00	
			30,900.00
			$70,250.00

State of Wisconsin.

In Douglas County.

91.	Northeast quarter section 5, town 48, range 13....	$1,440.00
92.	Northwest quarter section 4, town 48, range 13...	1,280.00
93.	Southwest quarter section 28, town 49, range 14..	1,600.00
94.	13-16ths of lot 2, section 36, town 49, range 14...	904.00
95.	13-16ths of lot 3, section 36, town 49, range 14...	990.00
96.	Lot 7, section 1, town 48, range 14.....	270.00
97.	Lot 8, section 1, town 48, range 14.....	218.40
98.	Lot 9, section 1, town 48, range 14.....	313.60

99.	Lot 1, section 1, town 48, range 14	$210.00
100.	Lot 2, section 1, town 48, range 14	511.44
101.	Lot 3, section 1, town 48, range 14	443.84
102.	Lots 1, 2, 3, and 4, section 35, town 49, range 12	287.00
103.	Southeast quarter section 8, town 47, range 14	200.00
104.	East half southwest quarter section 8, town 47, range 14	100.00
105.	South half northwest quarter section 18, town 47, range 14	100.00
106.	Northeast quarter northwest quarter section 18, town 47, range 14	50.00
107.	Northeast quarter section 18, town 47, range 14	200.00
108.	East half northwest quarter section 30, town 47, range 14	100.00
109.	Southeast quarter northeast quarter section 36, town 48, range 11	50.00
		$9,269.24
510	Superior City.	
110.	Lots 262 and 272, West First street	200.00
111.	Lot 217, West Third street	150.00
112.	Lots 3, 21, 22, 23, Quebec Pier, $100 each	400.00
113.	Lot 298, River street, no front	5.00
[L. S.]		$10,024.24

Third schedule referred to in the foregoing report, being a list of the several lands allotted to the within named Henry Argue Stinson.

Property in the city of Hamilton and in the township of Barton, in the county of Wentworth, in the Provence of Ontario.

1.	The property at the northeast corner of Hughson street and King street, being composed of part of city lots 5 and 6, fronting in King street, Hamilton (lease-hold property)	$25,000.00
2.	Lots 16, 17, 18, 19, 21, 30, and 31, on East Market street, in the testator's survey, city of Hamilton	2,250.00
3.	Lot 7 on the east side of Mary street, south of King William street, Hamilton, in the testator's survey	1,500.00
4.	A piece of land containing 12 acres and 48 hundredths of an acre, bounded on the east, west, and north by Wentworth street, Emerald street and Henry street, respectively, and on the south by property surveyed into lots by one Tisdale, and a parcel surveyed into lots by the testator, excepting thereout a small piece sold to one Newbury	8,750.00
5.	Lots 22, 23, 24, 27, and 28, in the testator's subdivision of lot 4, in Michael Aikman's survey of part of lot 10, in the 2nd Concession of Barton	1,050.00

6. Lots 29, 30, 31, 35, 36, and 37, on Argue street, in the testator's survey of part of lot 10, in the 3rd Concession of Barton	$900.00
7. Lots 42, 43, 44, and 45, on Argue street, in the last mentioned survey of the testator	600.00
8. The testator's homestead, containing about an acre an three-quarters, situate on Queen street, Hamilton	12,500.00
	$52,550.00

511 State of Minnesota.

St. Paul property.

9. The undivided half of lot 5, section 6, town 28, range 22. The undivided half of lot 1, section 7, town 28, range 22	$22,000.00
10. Lot 11, block 58, in Irvine's enlargement to Rice and Irvine's addition to St. Paul	2,400.00
11. Block 5, Stinson, Brown & Ramsay's addition	13,750.00
12. Southwest quarter of block 13, Stinson, Brown & Ramsay's addition	4,140.00
13. East half of block 6, Stinson, Brown & Ramsay's addition	6,360.00
14. East half of block 30, Stinson, Brown & Ramsay's addition	3,000.00
15. Block 25, Stinson, Brown & Ramsay's addition	10,175.00
16. Block 33, Stinson, Brown & Ramsay's addition	4,440.00
17. Block 35, Stinson, Brown & Ramsay's addition	990.00
18. Lots 10, 34, 36, 41, 2, 3, 31, 32, 43, 45, 53, 57, 58, parts of lots 59, 61, and lot 62, in block 28, Stinson, Brown & Ramsay's addition	480.00
19. Lot 1, in block 29, in Stinson, Brown & Ramsay's addition	20.00
20. Lots 14 and 15, in block 28, Stinson, Brown & Ramsay's addition, at $210	420.00

Property in Ramsay County.

21. North half of southeast quarter in section 11, town 28, range 22, 80 acres, at $85	6,800.00
22. Northeast quarter of northwest quarter in section 13, town 28, range 22; and northwest quarter of northeast quarter of section 13, town 28, range 22, 80 acres, less 10 sold, at $60	4,200.00
23. Southwest quarter of northwest quarter section 2, town 29, range 22, 40 acres, at $12	480.00
Forward	$79,655.00

[L. S.]

Brought forward	$79,655.00
24. West half of southwest quarter of section 2, town 29, range 22, 80 acres, at $12	960.00
25. Southwest quarter of southeast quarter of section 12, town 29, range 22, 40 acres, at $12	480.00
512 26. West half of northeast quarter of section 24, town 29, range 22, 80 acres, at $50	4,000.00
27. Southeast quarter of northeast quarter of section 24, town 29, range 22, 40 acres, at $50	2,000.00
28. Block 36, Arlington Heights, in section 29, town 29, range 22	6,000.00
29. Block 37, Arlington Heights, in section 29, town 29, range 22	4,500.00
30. Block 48, Arlington Heights, in section 29, town 29, range 22	2,000.00
31. Block 49, Arlington Heights, in secton 29, town 29, range 22	1,000.00
32. Southwest quarter of northwest quarter section 34, town 29, range 22, 40 acres, at $225	9,000.00
33. Northwest quarter of northwest quarter of southeast quarter of section 3, town 28, range 23, 10 acres, at $675	6,750.00
34. Southeast quarter of northwest quarter of northeast quarter of section 10, town 28, range 23, 10 acres, at $400.	4,000.00
35. Lot 2, section 3, town 29, range 23	450.00
36. Northwest quarter of northeast quarter section 14, town 29, range 23, 40 acres, at $100; and west half of northeast quarter of northeast quarter of section 14, town 29, range 23, 20 acres, at $100	6,000.00
36a. An undivided one-third of block No. 2 of McKinty's out lots	1,000.00

Property in Hennepin County.

37. North half northwest quarter of southwest quarter section 18, town 29, range 23, 20 acres, at $100	2,000.00
38. Southwest quarter of northwest quarter section 18, town 29, range 23, 40 acres, at $100	4,000.00

Washington County.

39. West half of Southwest quarter section 6, town 29, range 21, 80 acres	4,000.00
40. North half of northeast quarter section 8, town 29, range 21, 80 acres	4,000.00
41. Southwest quarter of northeast quarter section 8, town 29, range 21, 40 acres	2,000.00
42. Lost 3, 4, 5, 6, and 7, in section 5, town 31, range 20	840.00
513 43. Lot 4, section 17, town 31, range 20	135.00
44. East half of northwest quarter section 10, town 31, range 20	450.00
45. Northeast quarter of section 24, town 32, range 21.	48.00

46. Lots 1, 2, 3, 4, and 5, in section 20, town 32, range 20	$980.00
47. Lot 4 in section 33, town 32, range 20	150.00
Chisago County.	
48. East half of northeast quarter in section 8, town 33, range 20	400.00
49. Southwest quarter of northwest quarter in section 15, town 33, range 19	200.00
50. Northwest quarter of southwest quarter, in section 22, town 33, range 19	200.00
51. West half of northwest quarter in section 22, town 33, range 19	400.00
Forward	$148,030.00
[L. S.] Brought forward	$148,030.00
52. West half of northwest quarter in section 23, town 34, range 19	400.00
53. North half of southwest quarter of section 34, town 34, range 19	400.00
	$148,830.00
State of Wisconsin.	
In Douglas County.	
54. Northwest quarter of section 5, town 48, range 13.	1,440.00
55. Northeast quarter of section 2, town 48, range 14.	1,280.00
56. Northwest quarter of section 33, town 49, range 14.	1,600.00
57. Southwest quarter of section 36, town 49, range 14.	2,800.00
58. East half of southwest quarter of section 15, town 48, range 13	200.00
59. South half of southwest quarter of southwest quarter of section 15, town 48, range 13	50.00
60. Lot 1, in section 28, town 49, range 11	67.00
514 61. Lots 1, 2, 3, and 4, in section 29, town 49, range 11	364.00
62. Lots 1, 2, 3, and 4, in section 32, town 49, range 12.	612.00
63. Lots 1 and 2, in section 34, town 49, range 12.	187.00
64. North half of section 6, town 47, range 14	400.00
65. West half of southwest quarter of section 20, town 47, range 14	100.00
66. Southeast quarter of southwest quarter of section 20, town 47, range 14	50.00
67. West half of northeast quarter of section 30, town 47, range 14	100.00
68. Southeast quarter of northeast quarter of section 30, town 47, range 14	50.00
Superior City.	
69. Lot 274 on West First street	100.00
70. Lot 161 on West Second street	225.00

71. Lot 338 on West Fifth street		$100.00
72. Lots 24, 25, and 26 on Quebec pier		300.00
		$10,025.00

Chicago property.

Sublots in lot 1, block 38 in SW. ¼ and so much of SE. ¼ of section 21 as lies east of the Chicago River.		
Lots in block 38, section 21, town 39, range 14:		
73. Sublots 38, 39, 44, 45, and 50 on Jefferson street, at $1,800	9,000.00	
74. Sublots 43 and 46, in String street, at $1,200	2,400.00	
		11,400.00
75. Lot 80, in block 17, section 19, town 39, range 14	900.00	
76. Lot 81, in block 17, section 19, town 39, range 14	850.00	
77. Lots 8, 9, and 10, in block 31, section 19, town 39, range 14, at $850	2,550.00	
78. Lots 62, 63, 64, 65, and 66, in block 31, section 19, town 39, range 14, at $700	3,500.00	
79. Lots 83, 84, 85, 86, 87, 88, and 89, in block 31, section 19, town 39, range 14, at $550.	3,850.00	
		11,650.00
515 80. Lots 1, 2, 3, and 4, Ashland avenue block 49, section 19, town 39 range 14	6,500.00	
Forward	$6,500.00	$23,050.00
[L. S.]		
Brought forward	$6,500.00	$23,050.00
81. Lots 30, 31, 32, 33, 34, and 35, section 19, town 39, range 14	5,250.00	
82. Lots 19, 20, 21, 22, and 23, section 19, town 39, range 14	4,250.00	
83. Lot 82, block 16, section 19, town 39, range 14	1,000.00	
In blocks 1, 2, and 10, section 31, town 39, range 14.		
84. Lot 10 and north half of lot 11, original survey	4,000.00	
85. Lots 30 and 31, original survey	3,900.00	
86. West half lot 37, original survey	1,500.00	
87. Lots 1, 2, 3, 4, and 5, new survey	5,000.00	
88. Lots 21, 22, 23, 24, and 25, new survey	3,500.00	
89. Lots 30, 31, and 32, new survey	1,750.00	
90. Lots 65, 66, 67, and 68, new survey	2,250.00	
91. Lot 44, new survey	800.00	
92. Lots 36, 37, and 38, new survey	2,250.00	
93. Lots 51, 52, 53, 54, and 55, new survey.	5,000.00	
		46,950.00
		$70,000.00

The two remaining quarter sections, being N. W. qr. sec. 26 and N. W. qr. sec. 35–49–14, were purchased by James Stinson from his father. See answer, page 15, above.

Conveyance from Thomas Stinson et al. to James Stinson.

Examined and passed, 21 Nov., 1878.
M. O'Reilly, master, at Hamilton.

This indenture, made in duplicate this twenty-first day of November, in the year of our Lord one thousand eight hundred and seventy-eight, between Thomas Stinson, of the city of Hamilton, in the county of Wentworth, and Province of Ontario, and Marion Ottaway, now residing in England, widow of the late Cuthbert I. Ottaway, deceased, infant children of John Stinson, in his lifetime of the said city of Hamilton, esquire, of the first part.

William McGiverin, of the city of Toronto, in the county of York, esquire, and Emma Caroline McGivern, his wife, of the second part.

516 Charles Matthew Counsell, of the said city of Hamilton, banker, of the third part, and James Stinson, of the city of Chicago, in the State of Illinois, one of the United States of America, esquire, of the fourth part.

Whereas Thomas Stinson, in his lifetime, of the said city of Hamilton, banker, did make and execute his last will and testament and a codicil thereto, both duly executed, so as to pass real estate, and bearing date, respectively, the thirteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, and twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-four, and departed this life on or about the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-four, without having altered or revoked the same; and the said Thomas Stinson did thereby appoint the said James Stinson and the said John Stinson, since deceased, and one Colin Dawson Reid, of the said city of Hamilton, esquire, since deceased, executors of such will, and probate thereof was granted by the surrogate court of the county of Wentworth, in the said province, to the said James Stinson and John Stinson, the said Colin Dawson Reid not having applied for or obtained probate thereof, and the said Thomas Stinson did by such his last will and testament give, devise, and bequeath all and singular his estate, real and personal, unto the said James Stinson, John Stinson, and Colin Dawson Reid as joint tenants upon the trusts and to and for the uses, intents, and purposes, and with the powers therein expressed, declared, limited, and given of and concerning the same.

And whereas the said Colin Dawson Reid, by deed bearing date on or about the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, disclaimed the offices of trustee and executor under the said will and codicil of the said Thomas Stinson.

And whereas the said John Stinson departed this life on or about the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty-five, having duly made and executed his last will and testament in such manner as to pass real estate, and dated on or about the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and sixty-four, whereby he did give and bequeath to his

wife, Emma Caroline, certain personal property therein mentioned or referred, and did devise and bequeath all the rest residue and remainder of his personal estate and effects of what nature or kind whatsoever and all his real estate whatsoever and wheresoever unto the said James Stinson and Charles Matthew Counsell as joint tenants upon the trusts therein expressed and declared of and concerning the same.

And whereas the said Emma Caroline intermarried with the
517 said William McGiverin in or about the month of August, one thousand eight hundred sixty-eight.

And whereas on the twenty-four day of October, in the year of our Lord one thousand eight hundred and seventy, an order was made by the court of chancery for the said province, on the application of the said Thomas Stinson and Marion Stinson, now Marion Ottaway, the infant children of the said John Stinson, "In the matter of the estate of Thomas Stinson, late of the city of Hamilton, in the county of Wentworth, deceased, Thomas Stinson and Marion Stinson, infants, under the age of twenty-one years, by William Giverin, their stepfather, and next friend against James Stinson and Charles Matthew Counsell, for the administration of the estate of the said Thomas Stinson, deceased, and certain accounts and inquiries in respect thereof were thereby ordered to be taken and made by the master of the said court at Hamilton, and among others an enquiry what real estate the said testator, Thomas Stinson, was seized of or entitled to at the time of his death.

And whereas the said master did, by his report in the said matter bearing date the seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, find that the real estate remaining unsold which the said Thomas Stinson was seized of or entitled to was, as mentioned and set forth in the third schedule to his said report, and which comprised among other lands and tenements those hereinafter mentioned and described.

And whereas by a decree made by the said court in the said matter bearing date the thirtieth day of April, one thousand eight hundred and seventy-three, the said court did, among other things, order and decree that the said James Stinson should set apart the sum of twenty-three thousand three hundred and fifty dollars, and invest the same in securities such as directed by the will of the said Thomas Stinson, in trust, to secure the annuity of fourteen hundred dollars for the widow of the said testator, Thomas Stinson, and for the other purposes in said will mentioned, and did further order and direct that the residue and remainder of the estate, real and personal, of the said Thomas Stinson, after payment of all debts and after setting apart such sum, should be divided into three equal portions, one such portion thereof to be allotted and conveyed to the said James Stinson, one other portion thereof to be allotted and conveyed to the trustees to be thereafter appointed for the said infants, Thomas Stinson and Marion Stinson, now Marion Ottaway, upon trusts to be thereafter declared of and concerning the same, and the remaining portion to be allotted and conveyed to Henry Argue Stinson, since deceased, and that it should be referred to the said master to make such valuation allotment, division, and partition, and did further
518 order and decree that all conveyances necessary for effectuating such partition should be approved by the said master, and that all

necessary parties should join in executing the same, and did reserve leave to any of the parties to apply from time to time as occasion might require.

And whereas the said master did, by his report in the said matter bearing date the sixteenth day of February, one thousand eight hundred and seventy-four, certify and submit to the said court that he had, pursuant to such decree, made a division and allotment of the real estate and leasehold property of the said Thomas Stinson into three portions, as nearly equal as possible; that he had allotted one of such portions to the said James Stinson, being the several parcels or tracts of land and premises in the second schedule to such report, and which consisted of lands and premises situated, respectively, as follows: Firstly, in the city of Hamilton and township of Barton, in the province of Ontario; secondly, in the city of Chicago, in the State of Illinois; thirdly, in the State of Minnesota; and, fourthly, in the State of Wisconsin, the lands and premises in such schedule mentioned lying in the State of Wisconsin, being those hereinafter particularly mentioned and described, and the said master did also by his said report certify and submit that he had allotted to the said infants, Thomas Stinson and Marion Stinson, now Marion Ottaway, the freehold and leasehold lands in the first schedule of the said report mentioned, which were also respectively situated in the township of Barton, and in the city of Hamilton and in the city of Chicago aforesaid, and in the said States of Minnesota and Wisconsin, and that he had in like manner allotted to the said Henry Argus Stinson the freehold and leasehold lands in the third schedule of said report mentioned, which lands were also respectively situated in the township of Barton, and in the cities of Hamilton and Chicago, aforesaid, and States of Minnesota and Wisconsin.

And whereas doubts arose as to the construction of the will of the said Thomas Stinson, in so far as the interests of the said infants were concerned, and the said infants, Thomas Stinson and Marion Stinson, now Marion Ottaway, on the sixth day of April, in the year of our Lord one thousand eight hundred and seventy-four, presented their petition in the said matter to the said court, praying for a declaration of the said court as to the meaning of the said will of the said Thomas Stinson, and whether John Stinson, the father of the said infants, took a vested interest in the lands of the said testator, Thomas Stinson, or in any share or portion of the same under the will of the said Thomas Stinson, so that the said infants would take the portion of lands and leasehold property allotted to them by the said last-mentioned report under the will of their said father, John Stinson,
or whether the said infants took such portion directly under the
519 will of the testator, Thomas Stinson which said petition came on to be heard before the said court in the presence of counsel for the said infants and for the said James Stinson, Charles Matthew Counsell, Henry Argue Stinson, and Emma Caroline McGiverin, and the said court did order that the said petitions should stand for judgment and the said matter coming on for judgment on the twenty-first day of May, in the year of our Lord one thousand eight hundred and seventy-four, the said court did by an order of that date declare that the said John Stinson, the father of the said infants, did take a vested interest in the share or portion of the lands and tenements and other estate given, devised, and bequeathed to him under the will of the testator, Thomas Stinson, and that the said infants did take the lands and

tenements and leasehold property so allotted to them by the said report of the said master under the will of their said father, John Stinson, and did order and decree the same accordingly, and the said court did further order and decree that the lands and leasehold estate so allotted to the said infants by the said report should be by all necessary and proper deeds and assurances conveyed to and vested in the said James Stinson and Charles M. Counsell, the trustees named in the will of the said John Stinson upon the trusts in such will expressed and contained, and that it should be referred to the master of the said court at Hamilton to settle all conveyances necessary to carry into effect the partition of the estate of the said Thomas Stinson.

And whereas the said William McGiverin and Emma Caroline McGiverin were duly served with an office copy of the administration order hereinbefore referred to, and were duly notified to attend upon all proceedings thereunder in the said matter, and neither of them attended or were represented in the proceedings in the master's office under the said order or the other order and decrees hereinbefore recited, but they have, and each of them hath, agreed to be bound, besides being bound by the practice of the said court, by all the proceedings had and taken in the said matter hereinbefore mentioned and refer'ed to in the same way, precisely as if they and each of them had attended or been represented in the course of such proceedings also to join in these presents for that purpose.

And whereas the said parties interested in the said lands are desirous of carrying out the allotment and partition in accordance with the said proceedings, reports, decrees, and orders of the said courts hereinbefore recited, and for convenience of dealing with the said lands it is agreed that separate deeds to each of the parties entitled shall be executed for the lands lying in Ontario, city of Chicago, and the States of Wisconsin and Minnesota, respectively, each deed conveying only the lands lying in the said Province City and States, respectively, and each being executed in one or more parts, as may be deemed most expedient.

And whereas the said Henry Argue Stinson departed this life on or about the twenty-eighth day of October, one thousand eight hundred and seventy-seven, since the date of the said partition, having first duly made and published his last will and testament in writing, whereby he devised and bequeathed to the said James Stinson all his estate, real and personal, and the said James Stinson is now entitled to a conveyance of the several lands and premises in and by the said report or partition allotted to the said Henry Argue Stinson, deceased.

And whereas by several indentures bearing even date herewith the freehold lands and tenements described in the first schedule of the said report, dated the sixteenth day of February, in the year of our Lord one thousand eight hundred and seventy-four, as being situate in the States of Illinois and Minnesota, and as having been partitioned and allotted to the said infants, Thomas Stinson and Marion Ottaway, have have been duly conveyed to or vested in the said James Stinson and Charles Matthew Consell, as trustees as aforesaid, under the will of the late John Stinson, the freehold and leasehold lands allotted to the said infants, situated in the Province of Ontario and mentioned in the said

report, having been previously conveyed to and vested in the said trustees under the will of the said late John Stinson.

And whereas the said several indentures, as well as these presents, have been settled by the said master, as testified by his signature on the margin thereof.

Now, this indenture witnesseth that the said parties of the first, second, and third parts, according to their several and respective estates and interests therein, in obedience to the said recited decrees and orders and in consideration of the premises and of the sum of one dollar to each of them paid by the said party of the fourth part (the receipt whereof is hereby acknowledged), do hereby grant, release, and confirm unto the said party of the fourth part, his heirs and assigns, forever:

All and singular the following parcels or tracts of land and premises situate and being in Douglas County, in the State of Wisconsin, one of the United States of America, that is to say:

The southeast quarter northeast quarter section thirty-six (36), town forty-eight (48), range eleven (11).

Lot one in section twenty-eight (28), town forty-nine (49), range eleven (11).

Lots one (1), two (2), three (3), and four (4), in section twenty-nine (29), town forty-nine (49), range eleven (11).

521 Lots one (1), two (2), three (3), and four (4), in section thirty two (32), town forty nine (49), range twelve (12).

Lots one (1) and two (2), in section thirty four (34), town forty nine (49), range twelve (12).

Lots one (1), two (2), three (3), and four (4), section thirty five (35), town forty nine (49), range twelve (12).

The north west quarter of section four (4), town forty eight (48), range thirteen (13).

The north east quarter of section five (5), town forty eight (48), range thirteen (13).

The north west quarter of section five (5), town forty eight (48), range thirteen (13).

The east half of south west quarter of section fifteen (15), town forty eight (48), range thirteen (13).

The south half of south west quarter of south west quarter of section fifteen (15), town forty eight (48), range thirteen (13).

The north half of section six (6), town forty seven (47), range fourteen (14).

The south east quarter of section eight (8), town forty seven (47), range fourteen (14).

The east half of south west quarter of section eight (8), town forty seven (47), range fourteen (14).

The south half north west quarter of section eighteen (18), town forty seven (47), range fourteen (14).

The north east quarter north west quarter of section eighteen (18), town forty seven (47), range fourteen (14).

The north east quarter of section eighteen (18), town forty seven (47), range fourteen (14).

The west half of south west quarter of section twenty (20), town forty seven (47), range fourteen (14).

The south east quarter of south west quarter of section twenty (20), town forty seven (47), range fourteen (14).

The west half of north east quarter of section thirty (30), town forty seven (47), range fourteen (14).

The south east quarter of north east quarter of section thirty (30), town forty seven (47), range fourteen (14).

The east half of north west quarter of section thirty (30), town forty seven (47), range fourteen (14).

Lots one (1), two (2), three (3), seven (7), eight (8), and nine (9), section one (1), town forty eight (48), range fourteen (14).

The north east quarter of section two (2), town forty eight (48), range fourteen (14).

The south west quarter of section twenty eight (28), town forty nine (49), range fourteen (14).

522 The north west quarter of section thirty three (33), town forty nine (49), range fourteen (14).

The south west quarter of section thirty six (36), town forty nine (49), range fourteen (14).

Thirteen sixteenths (13 16) of lot two and thirteen sixteenths (13 16) of lot three, section thirty six (36), town forty nine (49), range fourteen (14).

Also all and singular the following parcels or tracts of land and premises situate, lying, and being in Superior City, in said State of Wisconsin; that is to say:

Lots two hundred and sixty two (262), two hundred and seventy two (272), and two hundred and seventy four (274), on West First street.

Lot one hundred and sixty one (161), on West Second street.

Lot two hundred and seventeen (217), on West Third street.

Lot three hundred and thirty eight (338), on West Fifth street.

Lots three (3), twenty one (21), twenty two (22), twenty three (23), twenty four (24), twenty five (25), and twenty six (26), on Quebec pier.

Lot two hundred and ninety eight (298), on River street, no front.

To have and to hold the said lands and premises unto and to the use of the said party of the fourth part, his heirs and assigns, forever.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS STINSON. [L. S.]
MARION OTTAWAY. [L. S.]
W. MCGIVERIN. [L. S.]
EMMA MCGIVERIN. [L. S.]
C. M. COUNSELL. [L. S.]

Signed, sealed, and delivered in presence of—
WARREN F. BURTON.
J. M. GIBSON.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth:

I, John Morison Gibson, of the city of Hamilton, in the county of Wentworth and province of Ontario, a notary public in and for said

province of Ontario, do hereby certify that William McGiverin, who is personally known to me as the same person whose name is subscribed to the foregoing deed, appeared before me this day in person and
523 acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of June, A. D. 1879.

[L. S.]

J. M. GIBSON,
Notary Public.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth:

I, John Morison Gibson, of the city of Hamilton, in the county of Wentworth and Province of Ontario, a notary public in and for the said Province of Ontario, do hereby certify that Thomas Stinson, Emma Caroline McGiverin, and Charles Matthew Counsell, who are personally known to me as the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this eighteenth day of February, A. D. 1879.

[L. S.]

J. M. GIBSON,
Notary Public.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth:

I, John Morison Gibson, of the city of Hamilton, in the county of Wentworth and Province of Ontario, a notary public in and for the said Province of Ontario, do hereby certify that Marion Ottaway, who is personally known to me as the same person whose name is subscribed to the foregoing deed, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument of writing as her free and voluntry act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of June, A. D. 1879.

[L. S.]

J. M. GIBSON,
Notary Public.

524 (Endorsed:) Dated 21st Novr., 1878. Thomas Stinson, Marion Ottaway, et al. To James Stinson. Conveyance. Wisconsin lands. MacKelcan, Gibson & Bell, Hamilton, Ontario.

Conveyance of lands from W. F. Burton to James Stinson.

Examined and passed 6 December, 1878.
M. O'Reilly, master at Hamilton.

This indenture made this twenty-first day of November, in the year of our Lord one thousand eight hundred and seventy-eight,

Between Warren Franklin Burton, of the city of Hamilton, in the county of Wentworth, in the Province of Ontario, Canada, esquire, of the first part, and

James Stinson, of the city of Chicago, in the State of Illinois, one of the United States of America, esquire, and

Charles Matthew Counsell, of the said city of Hamilton, banker, devisees in trust under the last will and testament of John Stinson in his lifetime, of the said city of Hamilton, esquire, deceased, of the second part.

Whereas by indenture dated the twenty-first day of November, one thousand eight hundred and seventy-eight, made between the said James Stinson, of the first part; Emma Caroline McGiverin, of the said city of Hamilton, wife of William McGiverin, of the same place, of the second part; Thomas Stinson, of the said city of Hamilton, and Marion Ottaway, now residing in England, widow of the late Cuthbert John Ottaway, deceased, infant children of the said John Stinson, deceased, of the third part; and the said Warren Franklin Burton, of the fourth part, after reciting as is therein recited, the said parties of the first, second, and third parts did, for the consideration therein expressed and with the intent, objects, and purposes therein recited, grant, bargain, sell, release, and quitclaim unto the said party of the fourth part, being the party hereto of the first part, his heirs and assigns forever, the lands and premises hereinafter mentioned.

Now, this indenture witnesseth that the party hereto of the first part, in consideration of the premises and in order to effectuate the true intent and purpose of the above in part recited indenture, and further in consideration of the sum of one dollar, to him in hand paid by the parties hereto of the second part, the receipt whereof is hereby by him acknowledged, doth hereby grant, bargain, sell, assign, convey, assure, release, and quitclaim unto the parties of the second part as joint tenants, their heirs and assigns forever, all those certain tracts or parcels of land situate in the county of Douglas, in the State of Wisconsin, one of the United States of America, described as follows: The northeast quarter of section six (6), and the northeast quarter of section four (4), town (48),
525 range thirteen (13); the northwest quarter of section one (1), town forty-eight (48), range fourteen (14); the southwest quarter of section thirty-five (35); the northwest quarter of the southeast quarter in section thirty-six (36), and thirteen-sixteenths of lot one (1), in section thirty-six (36), town forty-nine (49), range fourteen (14); the northwest quarter of the northeast quarter of section one (1), town forty-eight (48), range fourteen (14), lots one (1), two (2), and three (3), in section twenty-one (21), and lots one (1), two (2), and three (3), in section thirty (30), town forty-nine (49), range eleven (11), lot three (3), in section thirty-one (31), lot four (4), in section thirty-one (31), lots one (1), two (2), and three (3), in section thirty-three (33), and lots one (1) and two (2), in section thirty-six (36), town forty-nine (49), range twelve (12); the south half of the northwest quarter of section sixteen (16) and the north half of the southwest quarter of section sixteen (16), town forty-eight (48), range twelve (12), and the south half of section eighteen (18), and the west half of the west half of section thirty (30), town forty-seven (47), range fourteen (14).

Also the following-described pieces or parcels of land situate in Superior city, in the said State of Wisconsin, namely, lots one hundred and forty-six (146) and two hundred and sixty (260), on West First street,

lot two hundred and ninety-seven (297), on Fourth street, lots one (1), eight (8), nine (9), and ten (10), on Quebec pier, and lots three hundred (300), three hundred and two (302), three hundred and four (304), three hundred and six (306), three hundred and eight (308), three hundred and ten (310), three hundred and twelve (312), three hundred and seven (307), three hundred and nine (309), and three hundred and eleven (311), on River street.

To have and to hold the said lands and premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said parties of the second part as joint tenants, their heirs and assigns forever, but upon, under, and subject to the trusts expressed and declared in and by the last will and testament of the said John Stinson, which is in the words and figures following; that is to say, "This is the last will and testament of me, John Stinson, of the city of Hamilton, in the county of Wentworth, in the province of Canada, esquire. I give, device, and bequeath to my dear wife, Emma Caroline, all the pictures, prints, books, plate, linen, china, pianoforte, wines, liquors, provisions, household goods, furniture, horses, carriages, harness, cows, chattels, and effects (other than money or securities for money), which shall at my death be in or about my dwelling house in the township of Barton, or the outbuildings or grounds thereof.

All the rest, residue, and remainder of my personal estate and effects of what nature or kind soever not hereinbefore bequeathed
526 and all my real estate whatsoever and wheresoever I give, devise, and bequeath unto my brother, James Stinson, and my brother-in-law, Charles Matthew Counsell, as joint tenants, their heirs, executors, administrators, or assigns upon the trusts following; that is to say, upon trust, they, my said trustees, or the survivor of them, or the heirs, executors, or administrators, or assigns of such survivor of them do, and shall at their discretion and as they may think best after my decease, call in and sell and convert into money the said residue of my personal estate and do, and shall at their discretion, at such times, and as they may think best, sell and dispose of all or any portion of my real estate, either altogether or in parcels, by public auction or private sale, and until such sale lease any part or portion of my said real estate for such rents, terms, and periods as they may think best, and with and out of the monies to arise by such sales of my real or personal estate do and shall, in the first place, pay and satisfy all my just debts, funeral and testamentary expenses, and do and shall, in the next place, lay out and invest the monies which shall arise by such sales as aforesaid in their, her, or his name or names at interest, either in good bond, stock, debentures, and mortgages, and real securities, as they may think best and do and shall pay the interest, dividends, and annual produce of the said trust monies, funds, and securities, and also the rents, issues, and profits of my real estate which shall from time to time remain unsold, unto or permit my said wife or her assigns to receive the same for and during the period of her natural life; and after her death shall hold the said monies, stocks, funds, securities, and real estate unsold in trust for all my children or any of my children who being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter, shall attain the age or marry, and if more than one, in equal shares, and do and shall after the death of my said

wife and during the suspense of absolute vesting of such trust estate, my child or children, apply the annual income under the trusts hereinbefore declared for or toward the maintenance or support or education of such child or children.

And if there shall be no child of mine living at my death who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then after the death of my said wife and such default or failure of children, I bequeath the said trust monies, stocks, funds, shares, securities, and real estate, in equal portions, unto my brothers James and Henry Argue, or the survivor of them, and the children of such as shall be dead, the children of such as shall be deceased to take equally among them the shares their father would have taken had he been living.

Provided always as to my real estate which consists of my
527 dwelling house in which I now reside on Burlington street, in the township of Barton, and the acre of ground upon which the same is built; it shall be in the discretion of my said executors and trustees, and if my said wife should desire it, to allow my said wife to live and remain in the same as a house and home for her during the term of her natural life.

And I do will and declare that during the continuance of my trust estate my said trustees shall have full power from time to time, as they shall think proper, to alter and vary the said stock, funds, and securities for others of a like kind.

And I declare that the trustees or trustee for the time being of this my will shall not be liable to answer or make good any losses that shall happen in the execution of the trusts mentioned in this my will, unless the same shall happen by or through their or his own willful neglect or default; nor shall any or either of them, my said trustees, be answerable or accountable for the acts, deeds, receipts, and disbursements of the other of them; and I do hereby direct that my said trustees shall and may pay and reimburse themselves and himself out of my estate all reasonable and necessary costs, charges, and expenses which they may pay or sustain about the execution of this my will and trusts thereby created.

I declare that the provisions hereby made for my said wife shall be accepted by her in full satisfaction of her claim to dower out of any real estate of which I have been or now am or shall be seized.

And I do lastly appoint the said James Stinson and Charles Matthew Counsell executors and trustees of this my last will and testament, and I appoint my said wife and the said James Stinson and Charles Matthew Counsell guardians of my infant children.

In witness whereof, I, the said John Stinson, have hereunto set my hand and seal this 24th day of November, A. D. 1864.

(Sd.) JOHN STINSON.

Signed and sealed by the above-named John Stinson as and for his last will and testament in the presence of us present at the same time, who, in his presence and in the presence of each other, have hereunto subscribed our name as attesting witnesses thereto.

(Sd.) JOHN EASTWOOD.
(Sd.) WM. AMBROSE.

In witness whereof, the said parties hereto have hereunto set their hands and seals.

WARREN F. BURTON. [L. S.]

Signed, sealed, and delivered in presence of—
(All alterations, erasures, and interlineations initialed T. H. S. having been made before execution.)

A. BRUCE,
A Notary Public.
DOUGLAS BUCHANAN.

528 DOMINION OF CANADA,
Province of Ontario, County of Wentworth:

Be it remembered, that on this twenty-fifth day February, in the year of our Lord one thousand eight hundred and seventy-nine, the above named grantor, Warren Franklin Burton, to me personally known, personally came before me and acknowledged that he had executed the above instrument freely for the uses and purposes therein mentioned, all alterations, erasures, and interlineations initialed T. H. S. having been made before execution.

[L. S.]

A. BRUCE,
A Notary Public for the Province of Ontario.

(Endorsed:) B. 13196. Dated 21st November, 1878. Stinson vs. Stinson. Conveyance of lands in Wisconsin. Warren F. Burton to James Stinson et al. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 9th day of November, A. D. 1882, at 9 o'clock a. m., and was duly recorded in book "2" of deeds, pages 128, 129, 130, 131, 132. D. Geo. Morrison, register of deeds. Bruce, Walker & Burton, conveyancers, &c., Hamilton, Ont. L. S.

Conveyance from James Stinson et al. to W. F. Burton.

Examined and passed 6 December, 1878.
M. O'Reilly, master, at Hamilton.

This indenture, made this twenty-first day of November, in the year of our Lord one thousand eight hundred and seventy-eight,

Between James Stinson, of the city of Chicago, in the State of Illinois, one of the United States of America, esquire, of the first part;

Emma Caroline McGiverin, of the city of Hamilton, in the county of Wentworth and Province of Ontario, wife of William McGiverin, of the same place, merchant, of the second part; and

Thomas Stinson, of the city of Hamilton, and Marion Ottaway, now residing in England, widow of the late Cuthbert John Ottaway, deceased, infant children of John Stinson, in his lifetime of the said city, esquire, deceased, of the third part; and

Warren Franklin Burton, of the said city of Hamilton, esquire, of the fourth part:

529 Whereas Thomas Stinson, in his lifetime, of the said city of Hamilton, banker, did make and execute his last will and testament and a codicil thereto, both duly executed, and to pass real

estate and bearing date, respectively, the thirteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, and the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-four, and departed this life on or about the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-four, without having altered or revoked the same, and the said Thomas Stinson did thereby appoint the said James Stinson and the said John Stinson, since deceased, and one Colin Dawson Reid, of the said city of Hamilton, esquire, since deceased, executors of such will and probate thereof, was granted by surrogate court of the county of Wentworth, in the said Province, to the said James Stinson and John Stinson, the said Colin Dawson Reid not having applied for or obtained probate thereof, and the said Thomas Stinson did by such, his last will and testament, give, devise, and bequeath all and singular his estate, real and personal unto the said James Stinson, John Stinson, and Colin Dawson Reid, as joint tenants upon the trusts and to and for the uses, intents, and purposes and with the power therein expressed, declared, limited, and given of and concerning the same;

And whereas the said Colin Dawson Reid, by deed bearing date on or bout the thirtieth day of January, in the year of our Lord one thousand eight hundred and sixty-five, disclaimed the offices of trustee and executor under the said will and codicil of the said Thomas Stinson;

And whereas the said John Stinson departed this life on or about the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty-five, having duly made and executed his last will and testament in such manner as to pass real estate, and dated on or about the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and sixty-four, whereby he did give and bequeath to his wife, Emma Caroline, certain personal property therein mentioned or referred to, and did devise and bequeath all the rest, residue, and remainder of his personal estate and effects of what nature and kind soever, and all his real estate whatsoever and wheresoever unto the said James Stinson and Charles Matthew Counsell as joint tenants upont he trusts therein expressed and declared of and concerning the same;

And whereas the said Emma Caroline intermarried with the said William McGiverin on or about the month of August, one thousand eight hundred and sixty-eight;

And whereas on the twenth-fourth day of October, in the year of our Lord one thousand eight hundred and seventy, an order was made
530 by the court of chancery for the said Province, on the application of the said Thomas Stinson and Marion Stinson, the infant children of the said John Stinson, "In the matter of the estate of Thomas Stinson, late of the city of Hamilton, in the county of Wentworth, deceased, Thomas Stinson, and Marion Stinson, now Marion Ottaway, infants, under the age of twenty-one years, by William McGiverin, their stepfather and next friend, against James Stinson and Charles Matthew Counsell," for the administration of the estate of the said Thomas Stinson, deceased, and certain accounts and enquiries in respect thereof were thereby ordered to be taken and made by the master of the said court, at Hamilton, and among others an enquiry what real estate the said testator, Thomas Stinson, was seized of or entitled to at the time of his death;

And whereas the said master, did by his report in the said matter, bearing date the seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, find that the real estate remaining unsold, which the said Thomas Stinson was seized or or entitled to, was as mentioned and set forth in the third schedule to his said report, and which comprised, among other lands and tenements, those hereinafter mentioned and described;

And whereas by a decree made by the said court in the said matter, bearing date the thirtieth day of April, one thousand eight hundred and seventy-three, the said court did, among other things, order and decree that the said James Stinson should set apart the sum of twenty-three thousand three hundred and fifty dollars, and invest the same in securities, such as directed by the will of the said Thomas Stinson, in trust, to secure the annuity of fourteen hundred dollars for the widow of the said testator, Thomas Stinson, and for the other purposes in said will mentioned, and did further order and direct that the residue and remainder of the estate, real and personal, of the said Thomas Stinson, after the payment of all debts and after setting apart such sum should be divided into three equal portions, one such portion thereof to be allotted and conveyed to the said James Stinson, one other such portion thereof to be allotted and conveyed to trustees, to be thereafter appointed for the said infants, Thomas Stinson and Marion Stinson, now Marion Ottaway, upon trusts to be thereafter declared of and concerning the same, and the remaining portion to be allotted and conveyed to Henry Argue Stinson, since deceased, and that it should be referred to the said master to make such valuation, allotment, division, and partition, and did further order and decree that all conveyances necessary for effectuating such partition should be approved by the said master, and that all necessary parties should join in executing the same, and did reserve leave to any of the parties to apply from time to time as occasion might require;

531 And whereas the said master did, by his report in the said matter bearing date the sixteenth day of February, in the year of our Lord one thousand eight hundred and seventy-four, certify and submit to the said court that he had, pursuant to such decree, made a division and allotment of the real estate and leasehold property of the said Thomas Stinson, into three portions as nearly equal as possible, and that he had allotted one of such portions to the said infants, Thomas Stinson and Marion Stinson, being the several parcels or tracts of land and premises in the first schedule to such report, and which consisted of lands and premises situated, respectively, as follows: Firstly, in the city of Hamilton and township of Barton, in the Province of Ontario; secondly, in the city of Chicago, in the State of Illinois; thirdly, in the State of Minnesota, and fourthly, in the State of Wisconsin; the lands and premises in such schedule mentioned lying in the said State of Wisconsin, being those hereinafter particularly mentioned and described, and the said master did also, by his said report, certify and submit that he had allotted to the said James Stinson the freehold and leasehold lands in the second schedule of the said report mentioned, which lands were also respectfully situated in the township of Barton, and in the city of Hamilton, and in the city of Chicago aforesaid, and in the said States of Minnesota and Wisconsin, and that he had in like manner allotted to

the said Henry Argue Stinson the freehold and leasehold lands in the third schedule of said report mentioned, which lands were also respectively situated in the township of Barton and in the cities of Hamilton and Chicago aforesaid, and States of Minnesota and Wisconsin;

And whereas doubts arose as to the true construction of the will of the said Thomas Stinson, in so far as the interests of the said infants were concerned, and the said infants, Thomas Stinson and Marion Stinson, now Marion Ottoway, on the sixth day of April, in the year of our Lord one thousand eight hundred and seventy-four, presented their petition in the said matter to the said court praying for a declaration by the said court as to the meaning of the said will of the said Thomas Stinson, and whether John Stinson, the father of the said infants, took a vested interest in the lands of the said testator, Thomas Stinson, or in any share or portion of the same under the will of the said Thomas Stinson, so that the said infants would take the portion of lands and leasehold property allotted to them by the said last mentioned report under the will of their said father, John Stinson, or whether the said infants took such portion directly under the will of the testator, Thomas Stinson, which said petition came on to be heard before the said court in the presence of counsel for the said infants and for the said James Stinson, Charles Matthew Counsell, Henry Argue Stinson, and Emma Caroline McGiverin, and the

532 said court did order that the said petition should stand for judgment; and the said matter coming on for judgment on the twenty-first day of May, one thousand eight hundred and seventy-four, the said court did, by an order of that date, declare that said John Stinson, the father of the said infants, did take a vested interest in the share or portion of the lands and tenements and other estate given, devised, and bequeathed to him under the will of the testator, Thomas Stinson, and that the said infants did take the lands and tenements and leasehold property so allotted to them by the said report of the said master under the will of their said father, John Stinson, and did order and decree the same accordingly, and the said court did further order and decree that the lands and leasehold estate so allotted to the said infants by the said report should be by all necessary and proper deeds and assurances conveyed to and vested in the said James Stinson and Charles Matthew Counsell, the trustees named in the will of the said John Stinson, upon the trusts in such will expressed and contained, and that it should be referred to the master of the said court at Hamilton to settle all conveyances necessary to carry into effect the partition of the estate of the said Thomas Stinson;

And whereas the said Henry Argue Stinson departed this life on or about the twenty-eighth day of October, one thousand eight hundred and seventy-seven, having by his last will and testament devised all his real and personal estate to the said James Stinson;

And whereas the said parties interested in the said lands are desirous of carrying out the allotment and partition in accordance with the said proceedings, decrees, reports, and orders of the said courts hereinbefore recited, and for convenience in dealing with said lands it is agreed that separate deeds to each of the parties entitled shall be executed for the lands lying in Ontario, city of Chicago, and the States of Minnesota and Wisconsin, respectively, each deed conveying only the lands lying in the

said Province, city, and States, respectively, and each being executed in one or more parts as may be deemed most expedient;

And whereas in order to conform to the forms and requirements of the laws in force in the said States of Wisconsin for the purpose of enabling the said James Stinson to convey and vest the lands hereinafter mentioned to and in himself and Charles Matthew Counsell as such trustees as aforesaid, it is necessary that the said lands should first be conveyed to some third party, and by him reconveyed to the said James Stinson and Charles Matthew Counsell as such trustees;

And whereas by an indenture bearing even date herewith and made between the said Thomas Stinson and Marion Ottoway, of the first part, the said William McGiverin and Emma McGiverin of the second
533 part, the said Charles Matthew Counsell of the third part, and the said James Stinson of the fourth part, the freehold lands described in the second and third schedule of the said report, dated the sixteenth day of February, in the year of our Lord one thousand eight hundred and seventy-four, and which include the lands in the State of Wisconsin partitioned and allotted to the said James Stinson and to the said Henry Argue Stinson, have been duly conveyed to or vested in the said James Stinson.

And whereas the said several indentures, as well as these presents, have been settled by the said master, as testified by his signature on the margin thereof,

Now this indenture witnesseth, that the said party hereto of the first part, as well for himself as in his capacity as surviving trustee under the last will and testament of the said Thomas Stinson, deceased, for the carrying out of such allotment, division, and partition, and in obedience to the said recited decrees and orders, in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the fourth part, doth hereby grant, bargain, sell, convey, assign, release, and quitclaim to the said party hereto of the fourth part, his heirs and assigns forever,

All those certain tracts or parcels of land situate in the county of Douglas, in the State of Wisconsin, one of the United States of America, described as follows: The northeast quarter of section six (6), and the northeast quarter of section four (4), town forty-eight (48), range thirteen (13); the northwest quarter of section one (1), town forty-eight (48), range fourteen (14); the southwest quarter of section thirty-five (35); the northwest quarter of the southeast quarter in section thirty-six (36); and thirteen-sixteenths of lot one (1), in section thirty-six (36), town forty-nine (49), range (14); the northwest quarter of the northeast quarter of section one (1), town forty-eight (48), range fourteen (14); lots one (1), two (2), and three (3) in section twenty-one (21), and lots one (1), two (2), and three (3) in section thirty (30), town forty-nine (49), range eleven (11); lot three (3) in section thirty-one (31); lot four (4) in section thirty one (31); lots one (1), two (2), and three (3) in section thirty-three (33); and lots one (1) and two (2) in section thirty-six (36), town forty-nine (49), range twelve (12); the south half of the northwest quarter of section sixteen (16), and the north half of the southwest quarter of section sixteen (16), town forty-eight (48), range twelve (12); and the south half of section eighteen (18), and the west half of the west half of section thirty (30), town forty-seven (47), range fourteen (14).

Also the following-described pieces or parcels of land situate in Superior city, in the State of Wisconsin, namely: Lots one hundred and forty-six (146) and two hundred and sixty (260), on West First street;
534 lot two hundred and ninety-seven (297), on Fourth street; lots one (1), eight (8), nine (9), and ten (10), on Quebec pier; and lots three hundred (300), three hundred and two (302), three hundred and four (304), three hundred and six (306), three hundred and eight (308), three hundred and ten (310), three hundred and twelve (312) three hundred and seven (307), three hundred and nine (309), and three hundred and eleven (311), on River street.

To have and to hold the said lands and premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said party of the fourth part, his heirs and assigns forever.

And the said several parties of the second and third parts do hereby respectively assent to and accept the said partition allotment and division of the said lands and premises, and of all the proceedings in the said suits, or matter by which the same has been arrived at or carried out, and the party of the first part covenants with the said party of the fourth party that free and clear, and freely and absolutely acquitted and exonerated and forever discharged or otherwise by the said party of the first part, or his heirs, will and sufficiently saved, kept harmless, and indemnified of, from, and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute recognizance, judgment, execution, extent, rent, annuity, forfeiture, reentry, and any and every other estate, title, charge, trouble, and encumbrances whatsoever, made, executed, occasioned, or suffered by the said party of the first part or his heirs, or by any person claiming, or to claim, by, from, under, or in trust for him, them, or any of them.

And the said party of the first part doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said party of the fourth part, his heirs and assigns, that he, the said party of the first part, his heirs, executors, and administrators, and all and every other person whomsoever, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, into or out of the said lands and premises hereby conveyed, or intended so to be, or any of them or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request and at the costs and charges of the said party of the fourth part, his heirs and assigns, make, do execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever for the better, more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said party of the fourth part, his heirs and assign, his ors their counsel in the law shall be reasonably devised,
535 advised, or required so as no such further assurances contain or imply by any further or other cost or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors, and administrators only, and so as no

person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof to go or travel from his usual place of abode.

In witness whereof the said parties hereto have hereunto set their hands and seals.

JAMES STINSON.	[SEAL.]
EMMA C. MCGIVERIN.	[SEAL.]
THOMAS STINSON.	[SEAL.]
MARION OTTOWAY.	[SEAL.]

Signed, sealed, and delivered in presence of—

All alterations, erasures, and interlineations initialed T. H. S. having been made before execution.

As to execution by James Stinson, Emma C. McGiverin, and Thomas Stinson—

J. L. GEDDES.
M. SIMPSON.

As to execution by Mrs. C. J. Ottoway—

DOUGLAS BUCHANAN.
CAMPBELL FERRIE.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth:

Be it remembered that on the twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-eight, the above-named grantors, James Stinson, Emma Caroline McGiverin, and Thomas Stinson, to me personally known, personally came before me and acknowledged that they had executed the above instrument freely for the uses and purposes therein mentioned, all alterations, erasures, and interlineations initialed T. H. S. having been made before execution.

[SEAL.] F. MACKELCAN, *Notary Public.*

536 DOMINION OF CANADA,
Province of Ontario, County of Wentworth:

Be it remembered that on the seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, Marion Ottoway, one of the above-named grantors, to me personally known, personally came before me and acknowledged that she had executed the above instrument freely for the uses and purposes therein mentioned, all alterations, erasures, and interlineations initialed T. H. S. having been made before execution.

[SEAL.] A. BRUCE, *a Notary Public.*

(Endorsed:) Dated 21st November, 1878. A. 13. 195. Stinson vs. Stinson. Conveyance of lands in Wisconsin. James Stinson, et al., to Warren F. Burton. Office of register of deeds, Douglas County, Wisconsin. SS. I hereby certify that the within instrument was filed in this office for record on the 9th day of November, A. D. 1882, at 9 o'clock, a. m., and was duly recorded in book 2 of deeds, pages 120, 121, 122, 123, 124, 125, 126, 127, 128. D. Geo. Morrison, register of deeds. Bruce, Walker & Burton, conveyancers, &c. Hamilton. (L. S.)

Conveyance from James Stinson, et al., to Emma McGiverin, et al.

This indenture, made this seventeenth day of August, in the year of our Lord one thousand eight hundred and eighty-two,

Between James Stinson, of the city of Chicago, in the State of Illinois, one of the United States of America, esquire, and

Charles Matthew Counsell, of the city of Hamilton, in the county of Wentworth, and Province of Ontario, banker, of the first part;

Emma Caroline McGiverin, of the said city of Hamilton, widow of William McGiverin, of the same place, merchant, deceased, of the second part, and

Thomas Henry Stinson, of the said city of Hamilton, solicitor, and Marion Elizabeth Ottaway, of the city of London, in the county of Middlesex, in that part of Great Britain called England, widow of the late Cuthbert John Ottaway, deceased, of the third part.

Whereas, by indenture dated the twenty-first day of November, one thousand eight hundred and seventy-eight, made between the said James Stinson of the first part, the said Emma Caroline McGiverin of the second part, the said Thomas Henry Stinson and Marion Elizabeth
537 Ottaway, infant children of John Stinson in his lifetime, of the said city of Hamilton, esquire, deceased, of the third part, and Warren Franklin Burton, of the said city of Hamilton, esquire, of the fourth part, the said party of the first part for the carrying out of the allotment, division, and partition under the last will and testament of Thomas Stinson, of the said city of Hamilton, deceased, and in obedience to certain decrees and orders of the court of chancery for the province of Ontario, duly in said recited indenture set forth and in further consideration of the sum of one dollar did grant, bargain, sell, assign, convey, release, and quitclaim unto the said party thereto of the fourth part, his heirs, and assigns forever the lands and premises hereinafter mentioned.

And whereas by indenture dated the said twenty-first day of November, one thousand eight hundred and seventy-eight, made between the said Warren Franklin Burton, of the first part, and the said James Stinson and Charles Matthew Counsell, devisees in trust under the last will and testament of John Stinson, in his lifetime of the said city of Hamilton, esquire, deceased, of the second part, the party hereto of the first part in order to effectuate the true intent and purpose of the above in part recited indenture, and in further consideration of the sum of one dollar, did grant, bargain, sell, assign, convey, assure, release, and quitclaim unto the parties of the second part as joint tenants, their heirs, and assigns forever, the lands and premises hereinafter mentioned; to have and to hold the said lands and premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said parties of the second part as joint tenants, their heirs and assigns forever, but upon, under, and subject to the trusts expressed and declared in and by the last will and testament of the said John Stinson, which last will and testament is fully set out in said in part recited indenture.

And whereas the party hereto of the second part is the widow of the late John Stinson and under the said will is entitled to a life interest in all the real estate which the said John Stinson was seized at the time of his death.

And whereas the said parties of the third part, the infant children of the said John Stinson mentioned in the hereinbefore firstly in part recited indenture, are both of the full age of twenty-one years and desire to release the parties hereto of the first part of and from the trusts reposed in them as trustees of the will of the said late John Stinson, and the parties her'to of the first part have consented to convey unto the said parties of the second and third parts the said trust estate, having been duly discharged from the said trusts created by the said will.

538 Now this indenture witnesseth that in consideration of the premises and in further consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby by them acknowledged, they, the said parties of the first part, do hereby grant, bargain, sell, assign, convey, assure, release, and quitclaim unto the parties of the second and third parts all and singular those certain tracts or parcels of land situate in the county of Douglas in the State of Wisconsin, one of the United States of America, described as follows: The northeast quarter of section six (6); the northeast quarter of section four (4), town forty-eight (48), range thirteen (13); the northwest quarter of section one (1), town forty-eight (48), range fourteen (14); the southwest quarter of section thirty-five (35); the northwest quarter of the southeast quarter of section thirty-six (36) and thirteen-sixteenths (13 16) of lot one (1) in section thirty-six (36), town forty-nine (49), range fourteen (14); the northwest quarter of the northeast quarter of section one (1), town forty-eight (48), range fourteen (14), lots (1), two (2), and three (3) in section twenty-one (21), and lots one (1), two (2), and three (3) in section thirty (30), town forty-nine (49), range eleven (11); lot three (3) in section thirty-one (31); lot four in section thirty-one (31); lots one (1), two (2), and three (3) in section thirty-three (33), and lots one (1) and two (2) in section thirty-six (36), town forty-nine (49), range twelve (12); the south half of the northwest quarter of section sixteen (16), and the north half of the southwest quarter of section sixteen (16), town forty-eight, range twelve (12), and the south half of section eighteen (18) and the west half of the west half of section thirty (30), town forty-seven (47), range fourteen (14).

Also the following described pieces or parcels of land situate in Superior in the said State of Wisconsin, namely: Lots one hundred and forty-six (146) and two hundred and sixty (260) on West First street and lot two hundred and ninety-seven (297) on West Fourth street.

To have and to hold the same unto the said party of the second part for and during the term of her natural life and from and after her decease unto the said parties of the third part, their heirs and assigns, to and for their sole and only use forever.

The said parties of the first part covenant with the said parties of the second and third parts that they will execute such further assurances of the said lands as may be requisite.

And the said parties of the first part covenant with the said parties of the second and third parts that they have done no act to encumber the said lands.

And the said parties of the first part release to the said parties of the second and third parts all their claims upon the said lands.

539 In witness whereof the said parties hereto have hereunto set their hands and seals.

JAMES STINSON. [L. S.]
C. M. COUNSELL. [L. S.]

Signed, sealed, and delivered in presence of—as to signature of C. M. Counsell—

ALEX. H. MOORE,
T. H. MACPHERSON.

As to signature of James Stinson—

JOHN JOHNSON,
SAM'L G. SLOAN.

DOMINION OF CANADA,
Province of Ontario, County of Wentworth.

Be it remembered that on this seventeenth day of August, A. D. one thousand eight hundred and eighty-two, the above-named Charles Mathew Counsell, to me personally known, personally came before me and acknowledged that he had executed the above instrument freely for the uses and purposes therein mentioned, all alterations, erasures, and interlineations initialed T. H. S. having been made before execution.

[L. S.]

J. M. GIBSON,
Notary Public.

STATE OF MINNESOTA,
County of Ramsey.

Be it remembered that on this 28th day of August, A. D. 1882, the above-named James Stinson, to me personally known, personally came before me and acknowledged that he had executed the above instrument freely for the uses and purposes therein mentioned, all alterations, erasures, and interlineations initialed T. H. S. having been made before execution.

[L. S.]

CHAS. N. BELL,
Notary Public, Ramsey Co., Minn.

540 (Endorsed:) C 13197. Dated 17th August, 1882. James Stinson, esqr., and Charles M. Counsell, esqr., to Emma C. McGiverin, Thomas H. Stinson, and Marion E. Ottaway, conveyance of lands in Wisconsin. Office of register of deeds, Douglas County, Wisconsin, ss. I hereby certify that the within instrument was filed in this office for record on the 9th day of November, A. D. 1882, at 9 o'clock a. m., and was duly recorded in book "2" of deeds, pages 132, 133, 134, & 135. D. Geo. Morrison, register of deeds. (L. S.) Thomas H. Stinson, Conveyancer, &c., Hamilton, Ont.

Deed record Volume Q, Douglas County, Wis., page 143.
A. No. 13203.

Warranty deed from Emma McGiverin et al. to James Stinson.

Emma C. McGiverin and others to James Stinson, esquire.

Warranty deed filed for record November 16th, 1882, at 9 oclock, a. m.

This indenture, made this thirty-first day of August, in the year of our Lord one thousand eight hundred and eighty-two, between Emma C. McGiverin, of the city of Hamilton, province of Ontario, widow, Thomas Henry Stinson, of the said city of Hamilton, solicitor, bachelor, and Marion E. Ottoway, of the city of London, England, widow, parties of the first part, and James Stinson, of the city of Chicago, in the State of Illinois, esquire, party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of twelve thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, all those tracts or parcels of land lying and being in the county of Douglas and State of Wisconsin, described as follows, to wit: The northeast quarter of section four; the northeast quarter of section six, town forty-eight, range thirteen; the northwest quarter of section one, town forty-eight, range fourteen; the southwest quarter of section thirty-five; the northwest quarter of the southeast quarter of section thirty-six and thirteen-sixteenths of lot one in section thirty-six, town forty-nine, range fourteen; the northwest quarter of the northeast quarter of section one, town forty-eight, range fourteen; lots one, two, and three in section thirty, town forty-nine, range eleven; lot three in section thirty-one; lot four in section thirty-one; lots one, two, and three in section thirty-three, and lots one and
541 two in section thirty-six, town forty-nine, range twelve, the south half of the northwest quarter of section sixteen, and the north half of the southwest quarter of section sixteen, town forty-eight, range twelve, the south half of section eighteen, and the west half of the west half of section thirty, town forty-seven, range fourteen. Also the following-described pieces or parcels of land situate in Superior City, namely: Lots one hundred and forty-six and two hundred and sixty on West First street and lot two hundred and ninety-seven on West Fourth street, to have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said party of the second part, his heirs and assigns forever, and the said Emma C. McGiverin, Thomas Henry Stinson, and Marion E. Ottoway, parties of the first part, for themselves, their heirs, executors, and administrators, do covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

EMMA C. McGIVERIN. [SEAL.]
THOMAS H. STINSON. [SEAL.]
MARION E. OTTOWAY. [SEAL.]
Per her attorney, T. H. STINSON. [SEAL.]

Signed, sealed, and delivered in presence of—
A. E. McNAIR.
R. D. FREEMAN.
QUIN JOHNSTONE.
SAM'L G. SLOAN.

542 DOMINION OF CANADA,
Province of Ontario:

I, Alexander Bruce, of the city of Hamilton, in the county of Wentworth, barrister, a notary public within and for said county and Province, do hereby certify that on this first day of September, A. D. 1882, personally came before me Emma C. McGiverin, to me well known as the same person described in and who executed the foregoing deed, and she acknowledged that she executed the same freely and voluntarily.

[SEAL.]
A. BRUCE,
A Notary Public for the Province of Ontario.

STATE OF MINNESOTA,
County of Ramsey:

I, Charles N. Bell, of the city of Saint Paul, a notary public in and for said Ramsey County, do hereby certify that on this fourth day of September, A. D. 1882, personally came before me Thomas Henry Stinson, to me well known as the same person described in and who executed the foregoing deed, and he acknowledged that he executed the same freely and voluntarily as his own free act and deed, as well as the act and deed of Marion E. Ottoway, her attorney in fact.

[SEAL.]
CHAS. N. BELL,
Notary Public, Ramsey Co., Minn.

(Endorsed:) Warranty deed. Emma C. McGiverin et al. to James Stinson. Copy.

543 *Certified copy of plat of Government survey.*

UNITED STATES OF AMERICA,
The State of Wisconsin,
Department of State.

To all to whom these presents shall come:

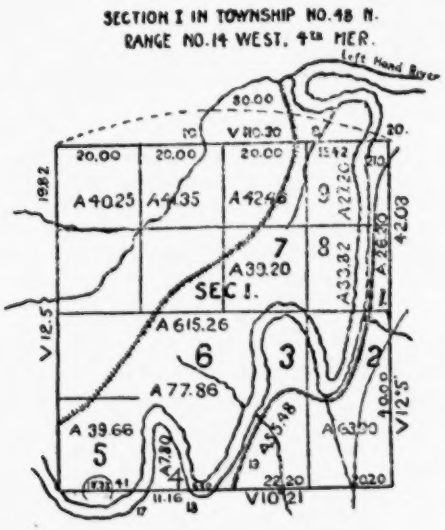
I, Wm. H. Froehlich, secretary of state of the State of Wisconsin, do hereby certify that the annexed copy of the plat of Government survey of section 1 in township No. 48 N. of range No. 14 west of the 4th principal meridian has been compared by me with the original plat of the Government survey in the office of the commissioner of the public lands

of the State of Wisconsin, and that the same is a true copy thereof, and of the whole of such original survey so far as the same relates to said section 1.

In testimony whereof, I have hereunto set my hand and affixed my official seal at the capital, in the city of Madison, this 2d day of November, A. D. 1899.

[L. S.]

WM. H. FROEHLICK,
Secretary of State.



544 *Letter of April 3, 1890.*

M. L. 54138— E. A. K.

Refer in reply to this initial: G. M. V. B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 3d, 1890.

Address only the Commissioner of the General Land Office.

A. A. HOEHLING, Esq.,
(Care Messrs. Shellabarger & Wilson),
Kellog Building, Washington, D. C.

SIR: I have to acknowledge receipt of $11.20 deposited by you with the request that copies of certain affidavits, in Hudson preemption cash entries, Nos. 1847, 1848, 1849, 1850, 1851, 2906, 2907, 2908, 3208 to 3213, inclusive, be furnished you.

In reply I have to inform you that it will be impossible for this office to furnish the affidavits desired in entries Nos. 2906, 2907, 2908, 3210, 3208, 3211, and 3213. The records of the office show that patents issued

in these cases May 1, 1856, were transmitted to Hon. H. M. Rice, House of Representatives, May 8, 1856, and their receipt acknowledged May 10, 1856.

Just before that time a communication from one Hiram Hayes was received in regard to the validity of these entries, which letter was answered May 22, 1856, after which time nothing is found on the records in regard to them, and the papers themselves have disappeared, and can not be found in the office, though repeated and careful search has been made at different times since 1860.

Entries numbers 1847, 1848, 1849, 1850, 1851, 3209, and 3212 will be made the subject of another communication.

Very respectfully,

LOUIS A. GROFF,
Commissioner.

545 *Stipulation as to facts.*

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

For the purpose of saving time and expense, it is stipulated, subject to all objections for relevancy and competency, that the complainants filed a bill of complaint in this court against the defendant, James Stinson, setting up substantially the same charges, covering the same lands, and praying the same relief, on the 10th day of August, 1887; that on or about the 10th day of December, 1888, the defendant moved to dismiss the bill, on the ground that the same was not signed by the Attorney-General of the United States, and upon such motion, the court, by its order of Dec. 28, 1888, directed that all further proceedings be suspended until July 1, 1899, and that such suit be dismissed on that day; reciting that such order was made to give the Attorney-General opportunity to commence another suit if he should deem it proper; and that upon bringing such suit this bill be dismissed; that in said suit an injunction was issued restraining defendant from conveying, disposing of, or incumbering the lands covered by all said suits. No answer was filed in said suit.

SECOND SUIT.

It is further stipulated that on the 2nd day of March, 1889, complainants filed their second bill of complaint against the defendant, James Stinson, in this court, and on March 4, 1889, he was by this court enjoined and restrained from conveying, disposing of, or mortgaging any of the lands described in the bill in this suit and also described in said first and second bills, pending such second suit; that the defendant appeared and on April 5, 1890, filed his answer in substantially the same terms as his answer in this case, except in respect to the conveyances made by him at a later date; that no testimony was ever taken in said suit, and no proceedings of any kind taken for that purpose on the part of the United States until April 21, 1892, when complainants applied to the court for

an order assigning a time within which to take evidence, which application was, on the 7th day of May, 1892, overruled by the court without prejudice to the right of complainants to renew same, accom-
546 panied with a motion to enlarge the time to take testimony; that no further proceedings were ever taken to set or enlarge such time; that on Dec. 20, 1893, defendant moved the court to dismiss the bill for want of prosecution thereof on the part of complainants, and on Feb. 24, 1894, the said bill was dismissed by the court for want of prosecution by complainants, and the injunction vacated and dissolved.

That on the 15th of September, 1894, complainants applied to the court for an order vacating the order of Feb. 24, 1894, dismissing the bill and vacating the injunction, and the same was heard Jan. 2, 1895, and denied by the court Feb. 5, 1895.

THIRD SUIT.

That on Feb. 25, 1895, complainants filed their third bill of complaint, being this suit, setting up substantially the matters stated in the first and second bills, and affecting the same lands.

JOHN B. SIMMONS, *Solicitor for Compl't.*
SPOONER, SANBORN & SPOONER,
Solrs. for Defts.

Meeting of May 30, 1881.

Volume 2. Proceedings of county board, Douglas County, Wisconsin, page 445:

SUPERVISORS' OFFICE, *May 30, 1881.*

Special meeting.

Board met pursuant to adjournment at 9 o'clock a. m. Present, H. W. Shaw, chairman; R. B. McLean and Urgelle Gouge, supervisors. Minutes of meeting, May 24th, 1881, were read.

James Stinson offered to pay $2,000 in cash for a release of all tax certificates and tax deeds held by Douglas County on all property in said county taxed to the said Stinson, which is not described and contained in a deed made by him to certain trustees for the use of the Northern Pacific Railroad Company, which deed is dated the —— day of ——, 188—, and now in the hand of Geo. W. Perry, esq. Said proposition was accepted by the board.

Horace S. Walbridge and Herman D. Walbridge offered to pay $1,087.05 in cash for a release of all tax certificates held by Douglas County and also tax deeds held by Douglas County on all property in said county taxed to Horace S. Walbridge or Walbridge estate which is not described and contained in a certain deed made by said Walbridge to trustees for the use of the Northern Pacific Railroad Company, which is dated —— day of ——, 188—.

The said offer was accepted by the board.

547 Both of aforesaid offers were embodied in the form of resolutions and were placed on file.

On motion, the board adjourned until Thursday, the 2nd day of June, 1881, at 9 o'clock a. m.

GEO. F. HOLCOMB, *County Clerk.*

Meeting of June 11, 1881.

Proceedings of county board, Douglas Co., Wis.

(Record of proceedings, vol. 2, p. 447, et seq.)

SUPERVISORS' OFFICE, *Superior, June 11, 1881.*

Special meeting.

Board met pursuant to adjournment at 7 o'clock p. m. Present, H. W. Shaw, chairman; R. B. McLean and Urgelle Gouge, supervisors.

On motion, the following were unanimously adopted:

Whereas it is most important to the development of the material interests of Douglas County that the Northern Pacific Railroad come to the Bay of Superior and establish depot and business facilities, connecting also with navigation; and

Whereas the Northern Pacific Railroad Company has signified an intention so to construct its said railroad in case certain depot grounds on said bay and certain property in Superior shall be conveyed to said railroad company; and

Whereas the county of Douglas holds tax deeds of a large portion of said depot grounds and property, and in furtherance of the construction of said railroad has agreed to contribute liberally to aid such enterprise; and

Whereas James Stinson, a former owner of a portion of said property and other property in Douglas County, claims that the title of said Douglas County in all said property is invalid, and that said county can not convey to said railroad company a good and sufficient title to said depot grounds and other property, and is also desirous of promoting the construction of said railroad, and has proposed to release and convey to said railroad company his said interest in said depot grounds, and also certain property in Superior, upon condition that said Douglas County release the same to said railroad company as soon as the road shall be constructed in 1881, according to the terms of a certain proposition made Sept. 7, 1880, and entered at large in the record of proceedings of this board on that date, and the further condition that said Douglas County assign and quitclaim to said James Stinson all tax certificates and tax titles and all property formerly owned by said Stinson in said
548 county, and never conveyed by said Stinson other than the property so to be conveyed to said railroad company, and as a further inducement has offered to pay to said county the sum of two thousand dollars and to withdraw and discontinue at his own cost any and all actions now pending commenced by him against said Douglas County; and

Whereas said James Stinson has executed a deed of said depot grounds and certain other property in Superior to Horace S. Wallbridge, James Bardon, and James B. Power, trustees, in trust to be delivered to said railroad company, and placed the same in escrow to be delivered to said trustees upon the release to him, said Stinson, of the remainder of the property in said county claimed by him, and upon which Douglas County holds tax deeds and tax certificates:

Now, therefore, it is hereby ordered and determined that the proposition of said James Stinson be accepted, and upon the payment by him of the said sum of two thousand dollars and the discontinuance of all actions by him begun and pending against said county at his cost, except as to the S. ½ N. W. and N. ½ S. W. of section 16, township 48, range 12, and N. E. ¼ of section 30, township 48, range 13, the clerk be, and he is hereby, directed to execute and deliver to said James Stinson proper assignments of all tax certificates and quitclaim deed or deeds of the property held by said county by tax deed and formerly belonging to said Stinson and never conveyed by him to anyone, other than the property to be released and conveyed to the said railroad company, and other than any of said property so formerly belonging to said Stinson heretofore by resolution of this board pledged to be conveyed to the Northern Pacific Railroad Company.

Adjourned without date.

GEO. F. HOLCOMB, *County Clerk.*

United States circuit court, district of Minnesota, —— division.

The President of the United States of America to R. R. Nelson, greeting:

You are hereby commanded to be and appear, without excuse or delay, before Fred Gosewich, a notary public, at Room 50, in Ramsey
549 County court-house, in the city of St. Paul, Minnesota, on the 18th day of November, A. D. 1899, at ten o'clock a. m., then and there to testify and the truth to say in a certain matter of controversy in United States circuit court, western district of Wisconsin, depending between United States of America, complainants, and James Stinson, defendant, on part of the said defendant, hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of November in the year A. D. 1899.

Issued at my office in the city of St. Paul under the seal of said circuit court, the day and year last aforesaid.

[L. S.]

HENRY D. LANG,
Clerk of said Circuit Court.

Testimony of R. R. Nelson.

The circuit court of the United States, for the western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Testimony of R. R. Nelson, taken before Fred. W. Gosewich, notary public, on the 18th day of November, 1899, at 10 o'clock a. m., at room No. 50, court-house, in the city of St. Paul, Ramsey County, Minnesota, pursuant to the stipulation of the parties waiving previous notice.

John B. Simmons appeared as special counsel for the complainant, and A. L. Sanborn for the defendants.

Stipulated that the testimony may be taken in shorthand by Geo. N. Hillman, and extended on the typewriter with the same effect as though taken down by the examiner in person. The reading over to the witness and his signature are waived.

R. R. NELSON, being duly sworn, testified as follows:

By Mr. SANBORN:

Q. Judge, you live in St. Paul?
A. I do.
Q. And you have lived here for some time?
A. I have lived here for some time; I lived here before I lived at the head of Lake Superior.
550 Q. What is your age, Judge?
A. I am in my 74th year.
Q. You were for a long time district judge of this district in the Federal court?
A. Yes, sir.
Q. For how long?
A. Nearly forty years.
Q. You were appointed by President Buchanan?
A. Yes, sir.
Q. And, having attained the age of seventy years, you resigned your office?
A. Yes.
Q. Some years ago?
A. Yes.
Q. You lived at the head of the lake for a year or two?
A. Yes, sir; nearly three years.
Q. At Superior?
A. Yes, sir.
Q. Where the old town now is?
A. Where the old town now is, yes.
Q. Were you a member of what was called the Townsite Company up there?
A. Yes, sir.
Q. And can you state who the other members of that company were?
A. I can tell most of them.
Q. Give what you can.
A. There was Col. D. A. Robertson, D. A. J. Baker, James Stinson, Granger (I don't recollect his full name, I think Granger, of course it is a long time ago), and Hunter, I think (Senator Hunter), of Virginia, I think he was one, possibly Cochran, of Washington. Perhaps a great many of these names that I have mentioned (that is, the latter two) may have been in Cochran's name.
Q. May have come in later?
A. May have come in later. It is, of course, a long time ago.
Q. Let me give you some names and see whether you remember them. George N. Nettleton?
A. I am not sure of Nettleton.
Q. William H. Newton?
A. Yes; William H. Newton.

Q. Benjamin Thompson?
A. Benjamin Thompson.
Q. Edmund Rice?
A. I think Edmund Rice, I wouldn't be sure about that.
Q. Horace S. Wallbridge?
A. Yes.
Q. George W. Cass?
A. Yes.
Q. Robert J. Walker.
A. Robert J. Walker.
Q. And yourself. Now, how were the interests in the townsite held, in stock or in undivided shares as tenants in common?
A. I think they were all tenants in common; I know my interest was.
Q. Were you appointed by different powers of attorney, together with Mr. Newton, to make partitions of these shares?
(Objected to by complainant's counsel as immaterial and irrelevant.)
551 A. I think it was either William H. Newton or George L. Becker, I don't recollect which; possibly it may have been Newton.
Q. And pursuant to those powers of attorney the different shares were alloted in severalty to the different owners?
(Same objection by complainant.)
A. Yes. That was after the platting of a certain portion of the land, and then the lots were deeded in severalty.
Q. Were you in Superior in the fall of 1854 all the time, or during the fall of 1854 and the spring and summer of 1855?
A. I was there a portion of the time. I couldn't fix when; I was there a portion of the time. I was in Madison, Wisconsin, I think, in the fall of 1863 or 1854 when the new county of Douglas was named and organized, after my friend, Senator Douglas, taken from LaPoint County.
Q. Did you stay there until the legislature passed the bill?
A. The legislature passed the bill, and the organization, that is so far as the governor—Gov. Barstow—Barstow was governor. I was appointed district attorney of the county.
Q. You staid there until the bill passed the legislature and was approved, setting off Douglas County from LaPointe County?
A. Until the bill was passed and approved, and making certain appointments.
Q. Certain appointments which had to be made under that act?
A. Either under the act or under some general law. I couldn't now recall which; I think under the act, though.
Q. Do you remember what date that was?
A. I could not. It was either the fall of 1853 or the fall of 1854; I am inclined to think it was in the fall of 1854.
Q. It must have been in the fall of 1854?
A. Yes; it must have been the fall of 1854.
Q. Because it was LaPointe County up to the spring of 1854?
A. Yes. Well, it was the fall of 1854 then.
Q. You made a preemption in 1854, settling some time in 1853?

A. I made a settlement in 1853.

Q. And obtained your certificate?

A. Obtained my certificate in the spring of 1854, I thing it was.

Q. And then some time later you turned in yours into the Townsite Company with other lands?

A. Yes.

Q. Now, you don't remember whether you were in Superior in September, 1854?

A. I don't remember.

Q. Or in June, 1855?

A. I don't remember. I was there either in June, 1854, or June, 1855, I know. The first boat came up that year—the Baltimore—June 3rd I think it was. It was either 1854 or 1855, I couldn't recollect now.

552 Q. To refresh your recollection, do you remember a boat coming up by the name of the—I can't remember the name myself now—the first boat through in 1854; they brought some cattle and they swam ashore; brought some goods for Ray & Markell.

A. I don't remember.

Q. Now, do you know, Judge, anything about the preemptions, improvements, settlements, which were made in the fall of 1854 or summer of 1855?

A. No, sir; I don't. I only recollect the preemption settlements of myself and two others—Mr. Baker, I think, and Col. Robertson.

Q. You came west what year?

A. In the spring of 1850.

Q. And you lived here in St. Paul for a while?

A. Yes.

Q. And then you went up into this venture up there?

A. Yes.

Q. And staid there a year or two, or three years?

A. I was up there nearly three years, off and on.

Q. And then you returned to St. Paul?

A. Yes.

Q. And made your home here since?

A. Yes, sir. In 1853 I made my house and settlement and proved it up in 1854; lived in the house there.

Q. And in 1856 you returned? In 1855 or 1856?

A. In 1856 here; I think it was 1856 or 1857. I was appointed by President Buchanan as judge of the Territory here in the spring of 1857; on my way from Washington here I received my appointment; in the spring of 1857.

Q. Then you came directly here and have lived here ever since?

A. Yes, sir.

Q. And you have no recollection as to the character of the preemption entries made after you made yours at all?

A. No, sir.

Q. As to whether the law was complied with strictly or otherwise?

A. I don't know anything about it.

Q. After that time?

A. No, sir.

Q. You proved up at Hudson or Willow River?
A. Hudson. It was the Willow River land office they called it. Mr. Henning was the register, I think, and Dr. Hoyt was the receiver.
Q. Otis Hoyt and Henning?
A. Yes.
(No cross-examination.)

553 *Certificate of notary.*

United States of America, circuit court of the United States for the western district of Wisconsin.

DISTRICT OF MINNESOTA, *ss:*

I, Fred W. Gosewisch, a notary public in and for the State of Minnesota, do hereby certify that in pursuance of the stipulation of the parties above noted, I took the deposition of R. R. Nelson at room 50, court house, in the city of St. Paul, county of Ramsey and State of Minn., on the 19th day of November, A. D. 1899, beginning at 10 o'clock in the forenoon, and ending at 10.30 o'clock in the forenoon on the same day; that such testimony was taken in the suit of U. S. plaintiff (complainant) against James Stinson and Henry J. Stinson, defendants, pending in the circuit court of the United States for the western district of Wisconsin, and that John B. Simmons for the complainant, and A. L. Sanborn for the defendant in said suit, appeared before me at the taking of said deposition.

I further certify that the reason for taking said deposition was that the said witness lives at a greater distance than one hundred miles from the place of trial of said suit.

That I am not now and never have been of counsel or attorney to either of the parties to the said suit, nor interested in the event of the cause; that said witness was, before giving any testimony, by me duly and publicly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and was by me carefully examined; that his testimony was reduced to writing by Geo. M. Hillman, a disinterested person, in my presence, pursuant to the stipulation of the parties appearing in the caption to said deposition, and that by the said stipulation the reading over of said testimony to the witness and his signature to the same were waived; that I have sealed up the said deposition and directed the same to said circuit court of the United States for the western district of Wisconsin at the city of Madison, in said district.

In testimony whereof I have hereunto set my hand and affixed my official seal this 18th day of November, A. D. 1899.

Fees paid witness, $1.60; subpœna, .25; fees for taking deposition, $3.00; paid by defendant, $4.85.

[L. S.]

FRED W. GOSEWISCH,
Notary Public, Ramsey County, Minn.

(Endorsed:) United States of America, complt., *v.* James Stinson et al. Deposition of R. R. Nelson.

554 *Deposition of Lorens Johnson, taken in the ejectment action of Gagnelius against Stinson, and here introduced by counsel for complainants in connection with the testimony of George N. Hillman.*

DISTRICT OF MINNESOTA, *ss:*

LORENTZ JOHNSON, being duly sworn through Otto Wallmark, interpreter, on examination by R. M. Bashford deposes and says as follows:

My name is Lorentz Johnson; I am seventy-two years of age; I was born in Sweden, I have lived in this country forty years; came here in 1853; since I came to this country I have lived in Chisago County, Minnesota; my business is farming; I am not able to speak English, so that my testimony has to be taken through an interpreter; I knew Andreas Swenson in his lifetime; came over with him in the same ship; he sometimes went by the name of Andreas Ogreen; there were so many here by the name of Swenson that he assumed the name Ogreen in order to get his letters; there were several of his relatives by the name of Ogreen; I knew Andreas Swenson in Sweden; we settled near together when we came to Minnesota and I continued my acquaintance with him here; soon after coming to this country I went with him to Superior, Wis.; I think there were about fourteen of us went together; we went up there to work by the month; we worked in Superior cleaning streets, and then Mr. Stinson took us out, one at a time, on the land; I know that Andreas Swenson took up some land; I know that he cleared some land and built a shanty upon it; I took up land there myself; I could not say how far distant Swenson's land was from mine.

And the said witness, upon cross-examination by A. L. Sanborn, deposes as follows:

I can name some of the men that went up to Superior with me; one was John Johnson, another Andreas Swenson, Peter Norell, John Londquist, but at that time he went by the name of John Johnson second; Johannas Helin, Peter Nelson, Matthias Larson, and Sven Larson, Sven Magnuson, a man by the name of Ahlstrom, Nils Berg; I can not recollect any more; Peter Nelson is dead; John Johnson is dead also; Johannas Helin is dead also; Matthias and Sven Larson are both dead; Ahlstrom is also dead; I know that some of these men whom I have mentioned took up land and built a shanty the same as Swenson.

555 Q. Did you go on some land to enter or preempt it?

(Objected to as incompetent, irrelevant, and immaterial. And it is stipulated between the counsel for the parties that the further cross-examination of this witness shall be taken subject to the same objection.)

A. Yes; I took up land and built a shanty on it. I can recollect that we changed work and slept in each other's shanties; can recollect that I slept in my shanty one night anyway, but can't recollect particularly; it is over forty years ago. I can recollect that I cleared a piece of land about the shanty. The roof of the shanty was covered with some brush and poles; there was an opening for a door, but can't recollect whether it was made to be locked and unlocked. I recollect going down to the land office at Hudson or Willow River and signing a paper before the land officers, in order to prove up on the land that I had entered. If the paper I signed stated that I never had made any other preemption, and did not

own 320 acres of land in any State or Territory, it was true. I never had made any other preemption, and did not own any other land at all. If it was contained in the paper that I did not enter upon the land to sell it on speculation, but to devote it to my own use, it was true. I did not enter it to sell on speculation, but to devote it to my own use. If the paper stated that I had not prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I might acquire from the Government of the United States should inure in whole or in part for the benefit of any person except myself, it was true. I had made no contract or bargain to sell to any person or for any person the said land or any part of it. I had not at any time made, and did not make, any agreement or understanding with James Stinson or any other person that the entry and improvement upon said land was for the benefit of said Stinson or any other person except myself. I can not recollect whether I paid any money for the entry or for the land.

(Counsel for the plaintiffs renews his objection to the testimony of this witness on cross-examination, and moves to strike out the same, and the whole thereof, as incompetent, irrelevant, and immaterial.)

his
LORENTZ x JOHNSON.
mark.

Subscribed and sworn to before me this 19th day of July, 1893.

[SEAL.] GEO. N. HILLMAN,
Notary Public, Minn.

556 EX. A–6.—*Affidavit of Peter Norell.*

PETER NORELL, being duly sworn, says that he is sixty-two years of age, a native of Sweden, and im'igrated to the United States in 1854, and settled in the county of Chisago, in Minnesota, where he still resides.

That some time in the month of September, 1854, he with others accepted the urgent proposition of one James Stinson to accompany him to Superior, Douglas County, in the State of Wisconsin, make claims of a quarter section each upon such legal subdivisions of land as he might select, follow him to the United States land office at Willow River, or Hudson, file, make final proof and payment, and convey the same land to him, by warranty deed, the said James Stinson to furnish the purchase money and pay us at the rate of $30 per month from the time we left our homes in Chisago County, Minnesota, until we returned, and expenses. We arrived at Superior about the last of August or first of September, 1854, where James Stinson pointed out the quarter section of land that I was to preempt for him, and which is described in my declaratory statement made on the 21st day of October, 1854, and my certificate of purchase No. 1849, dated October 24, 1854; also in my transfer by warranty deed made to James Stinson on the same day of the entry, to wit, on the 24th day of October, 1854, after which I received from James Stinson my pay at the rate of thirty dollars per month, according to the conditions of the verbal contract and understanding made between James Stinson and myself before I left my home in Chisago County, Minnesota.

He further states that while at Superior, Wisconsin, he worked upon a public road and bridge; that he never built a house and never plowed,

fenced, cultivated, or resided upon any portion of the southwest quarter of section No. 35, town No. 49 north, of range 14 west, although it is good agricultural land.

He also states that he was well acquainted with John Johnson, now deceased, who was one of the same party, and who was hired upon the same terms by Stinson to preempt and convey and who entered for James Stinson the northwest quarter of section 26, town 49, range 14 west, on the same day that he entered the land hereinbefore described for Stinson, to wit, on the 24th day of October, 1854, and knows that the said John Johnson did not plow, fence, cultivate, or reside upon any portion of the land that he preempted for the said Stinson, and that during the time the said John Johnson remained at Superior he worked with the rest
557 on the public road and bridge. He further states that at the time he was hired by James Stinson to preempt he had just arrived from the old country and could not speak or understand the English language, and did not know what the preemption law of 1841 and the rules and regulations of the Interior Department required of a preemptor, and did not know that he had violated any provision of the land laws of the United States, or that he had committed a fraud upon the Government. But he says that it is clear to him and others who performed like service for James Stinson that he, Stinson, knowingly and for his own special benefit misrepresented the law and the facts to us, taking the advantage of our ignorance of the law, and he should not be permitted to hold or transfer his worthless title, obtained by perjury and fraud. He further states that when he preempted he had to make his mark, but that since he has learned to write his name.

(Signed) PETER NORELL.

Subscribed and sworn to before me this 14th day of November, 1887.

In presence of—

CHAS. H. BUSH.

P. SHALEEN.

Sworn to and subscribed before me.

P. SHALEEN,

Clerk of District Court, Chisago Co., Minnesota.

[Seal of district court, Chisago County, Minn.]

And I hereby certify that the foregoing statement was read and explained to Peter Norell before it was signed and sworn to, and that the erasures and interlineations were made before this instrument was subscribed and sworn to. I further certify that Peter Norell is an old settler in this county, in good standing, and that his statements are entitled to full force and credit, and that he is the identical person he represents himself to be.

Witness my hand and seal of district court, at Centre City, this, the fourteenth day of November, 1887.

P. SHALEEN,

Clerk of District Court, Chisago Co., Minn.

[Seal district court, Chisago Co., Minn.]

558 *Answers in Gagnelius case.*

Circuit court of the United States for the western district of Wisconsin.

J. E. GAGNELIUS AND JOHN OGREN, PLAINTIFFS,
vs.
JAMES STINSON, DEFENDANT.

The answer of the defendant, James Stinson, to the complaint of J. E. Gagnelius and John Ogren, plaintiffs.

This defendant denies that the plaintiffs were, at the commencement of this action, now, or ever have been, the owners in fee simple, or otherwise, or entitled to the immediate or other possession, of the lands described in the complaint, to wit, the southwest quarter of section twenty-eight, township forty-nine north, of range fourteen west, in Douglas County, Wisconsin. He denies that Andreas Svenson ever conveyed the said lands, or any part thereof, to the plaintiffs, and denies any knowledge or information sufficient to form a belief whether the said Andreas Svenson executed any deed to said plaintiffs, as alleged in the complaint, or otherwise. Defendant denies that at the time or times mentioned in said complaint the said Andreas Svenson was the owner of or had any interest in, or was entitled to the possession of, the real property described in the complaint, and herein described, but alleges that this defendant claims title thereto under the said Andreas Svenson, which title accrued prior to the conveyance thereof, if any, made by the said Svenson to the plaintiffs.

Defendant admits that the plaintiffs were, at the time of the commencement of this action, and for more than five years theretofore were, and still are, residents and citizens of the State of Minnesota, and that the said Andreas Svenson was, up to the time of his death, which defendant alleges occurred after the commencement of this action, and had been at all times since the year 1853, a resident and citizen in the Territory and State of Minnesota, and admits that neither of the plaintiffs nor the said Andreas Svenson ever were residents or citizens of the State of Wisconsin.

Defendant denies that he did, at the time of the commencement of this action, or does now or ever did, wrongfully or unlawfully withhold the possession of said real estate from the plaintiffs in this suit.

Defendant admits that he was, at the commencement of this action, and is now, a resident and citizen of the State of Illinois.

559 Defendant denies that the plaintiffs have been damaged by the wrongful detention of said property or otherwise, in the sum of one thousand dollars, or in any other sum.

For a further and separate defense to this action the defendant alleges that neither the plaintiffs nor the said Andreas Svenson, under whom they claim, were seized or possessed of the premises in question, described in the complaint, within twenty years before the commencement of this action; and in that behalf he pleads the limitation of section 4207 of the Revised Statutes of this State.

For a further and separate defense defendant alleges that the taxes duly and lawfully levied and assessed by the proper authorities upon and

against the said southwest quarter of section twenty-eight for and during the year 1876 were not paid by the said Andreas Svenson, or by any other person, and that such land was duly and lawfully sold for the non-payment of said taxes by the county treasurer of said Douglas County, on or about the 1st day of September, A. D. 1877, to the said Douglas County, and the usual certificate of sale was issued and delivered to the said Douglas County; that the said lands were not redeemed from the said sale, and, the same remaining wholly unredeemed, the said State of Wisconsin and Douglas County did, by their tax deed, duly execute and acknowledged and delivered, bearing date on the 2nd day of September, A. D. 1880, grant, bargain, sell, and convey to said Douglas County the said land above described, together with other lands; and said tax deed so executed and delivered was fair and regular upon its face, and was duly recorded in the office of the register of deeds of said Douglas County on said September 2, 1880, in book 3 of Tax Deeds, on page 76 and succeeding pages, and that the said lands so granted and conveyed were at the time of the making and recording of said tax deed, and for many years prior thereto, and for more than three years thereafter, to wit, for the space of about ten years thereafter, vacant and unoccupied, and so remained, and this defendant pleads in that behalf the limitations of sections 1187 and 1188 of the Revised Statutes, and the acts amendatory thereof, in bar of this action. Defendant further alleges that the acknowledgment of the said tax deed was deemed to be defective, in that the words "to me known," were omitted from such acknowledgment, but in reality the same was not defective, for the reason that the officer taking such acknowledgment was a subscribing witness to the said deed, whereby the said supposed defect was supplied; but the officers of said Douglas County, deeming that such omission constituted a defect in the said deed, on or about the 12th day of July, A. D. 1882, caused said deed to be reacknowledged, and the county clerk of said county did then and there again acknowledge the same, and thereupon the said deed was duly recorded in said office of the register of deeds on said July
560 12, 1882, in book 3 of Tax Deeds, on page 125, and that the said lands so conveyed by said tax deed were at the time of said second record of said deed, and for more than three years thereafter, to wit, for about eight years thereafter, vacant and unoccupied, and so remained; and defendant pleads in that behalf the limitations of said sections 1187 and 1188.

This defendant further alleges that prior to the 20th day of June, A. D. 1881, the board of supervisors of said Douglas County duly and lawfully authorized George F. Holcomb, the county clerk of said county, to sell and convey, by a proper deed of conveyance, the said lands above described, and thereafter, and on or about the said 20th day of June, 1881, the said county of Douglas, in and by its deed dated on that day, duly executed in its behalf by said George F. Holcomb, as county clerk aforesaid, did grant, bargain, sell, and convey unto this defendant for the consideration of nineteen hundred and seventy-eight dollars and fifty-seven cents, to it paid by him, the lands hereinbefore described, together with other lands, and the said deed was thereafter recorded in the said office of the register of deeds on the 28th day of October, 1884, in volume 3 of Tax Deeds, on pages 270 and following; and that by virtue of

the said tax deed, resolution and deed of bargain and sale as aforesaid, and the operation of the statute of limitations of this State under the said tax deed, this defendant became and was, and still is, the absolute owner in fee simple of the lands above described.

This defendant, further answering, alleges that the said Andreas Svenson, the original owner of said lands, and under whom the said plaintiffs claim title, for the period of four years next preceding the first recording of the said tax deed, and for four years next preceding the second recording of said tax deed, failed and neglected to pay all the taxes levied and assessed against said lands, and that the grantee in said tax deed, and this defendant claiming under it, has for the period of three years from and after the date of the first recording of said tax deed, and from and after the date of the second recording of said tax deed, paid and redeemed all the taxes levied and assessed against the said lands; and that the said Andreas Svenson did not, within nine months from and after the passage and publication of chapter 133 of the laws of Wisconsin for the year 1885, bring any action in respect to said lands against this defendant, or otherwise; and in that behalf this defendant pleads the limitation of said chapter 133 of the Laws of 1885.

Wherefore, the defendant prays that the said complaint may be dismissed with costs.

SPOONER, SANBORN & KERR,
Defendant's Attorneys.

561 STATE OF WISCONSIN,
Dane County, ss:

A. L. Sanborn, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action; that all the material allegations of the answer are within the personal knowledge of this deponent as such attorney; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that the knowledge of this deponent is derived from an examination of the records of said Douglas County, in the office of the register of deeds of said county, and an abstract of title of the said lands and original deeds thereof held by this deponent as such attorney, and the grounds of deponent's belief are the said records, abstract, and conveyances, and the reason why this affidavit of verification is not made by the defendant is that he is not a resident of this State and is not within this county, to the best of deponent's knowledge and belief.

A. L. SANBORN.

Subscribed and sworn to before me this 13th day of July, A. D. 1893.

H. C. REED,
Notary Public, Dane County, Wis.

(Endorsed:) U. S. circuit court, West. Dist. of Wisconsin. J. E. Gagnelius and John Ogren v. James Stinson.
(Answer. Copy.)

Declaration of Sven Larson.

I, Sven Larson, of Douglas County, Wisconsin, being a single man over the age of twenty-one years and a citizen of the United States,

have, since the 4th day of September, 1841, to wit, on the 25th day of September, 1854, settled and improved the (NW. ¼) northwest quarter, section No. 35, town No. 49 north, of range No. 14 west, in the district of lands subject to sale at the land office at Willow River, containing 160 acres, which land is not subject to private entry since the passage of the act of September 4, 1841; and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the said act of 4th September, 1841.

Given under my hand this 21st day of October, A. D. 1854.

SVEN LARSON.

Signed in presence of—
JOHANNES HELING.
A. M. AHLJTVOM.

562 *Declaration of Peter Norell.*

No. 180.

I, Peter Norell, of Douglas County, Wisconsin, being a single man over the age of twenty-one years and a citizen of the United States, have, since the 4th day of September, 1841, to wit, on the 27th day of September, 1854, settled and improved the (SW. ¼) southwest quarter, section No. 35, town No. 49 north, of range No. 14 west, in the district of lands subject to sale at the land office at Willow River, containing 160 acres, which land is not subject to private entry since the passage of the act of September 4, 1841; and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the said act of 4th September, 1841.

Given under my hand this 21st day of October, A. D. 1854.

his
PETER X NORELL.
mark

Signed in presence of—
SVEN LARSON.
A. M. AHLJTVOM.

No. 181.

Declaration of Lorens Johnson.

No. 182.

I, Lorens Johnson, of Douglas County, State of Wisconsin, a married man and filed declaration to be a citizen of the United States, and have, since the first day of June, 1840, to wit, on the 28th day of September, 1854, settled and improved the NW. ¼ quarter of section No. 33, in township No. 19 N., of range No. 14 west, in district of land subject to sale at the land office at Willow River, Wis., and containing 160 acres, which land has not been rendered subject to private entry under the provisions of the act of September 4th, 1851, and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the act aforesaid.

Given under my hand this 24th day of October, A. D. 1854.

his
LORENS X JOHNSON.
mark

In presence of—
M. S. GIBSON, *Witness.*

563 *Declaration of John Johnson.*

I, John Johnson, of Douglas County, Wisconsin, being a married man over the age of twenty-one years and a citizen of the United States, have, since the 4th day of September, 1841, to wit, on the 26th day of September, 1854, settled and improved the northwest quarter (NW. ¼) of section No. 1, town No. 48 north, of range No. 14 west, in the district of lands subject to sale at the land office at Willow River, containing 161.60 acres, which land has not been rendered subject to private entry since the passage of the act of September 4, 1841; and I do hereby declare my intention to claim the said tract of land as a preemption right under the provisions of the said act of 4th September, 1841.

Given under my hand this 21st day of October, A. D. 1854.

his
JOHN X JOHNSON.
mark

Signed in presence of—
A. M. AHLJTVOM.
SVEN LARSON.

Declaration of Andrew Swenson.

TERRITORY OF MINNESOTA,
Washington County, ss:

I, Andrew Swenson, do hereby upon my oath declare that I first arrived in the United States on or about the 25th day of September, in the year 1853, and that I have ever since that time continued to reside in the United States, and that it is bona fide my intention to become a citizen of the United States and to renounce forever all allegiance and fidelity which I in any wise owe to any foreign prince, potentate, state, or sovereignty, and particularly all allegiance and fidelity which I owe to Oscar the 1st, King of Sweden, of whom I have heretofore been a subject.

ANDREW SWENSON.

Sworn to and subscribed before me this 28th day of July, 1854.

HARVEY WILSON,
Clerk District Court.

TERRITORY OF MINNESOTA,
Washington County, ss:

I hereby certify that the foregoing is a true copy of the original declaration of intention of Andrew Swenson, this day filed in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the district court of Washington County aforesaid this 28th day of July, 1854.

[SEAL.]

HARVEY WILSON,
Clerk of said Court.

564 TERRITORY OF MINNESOTA,
Washington County, ss:

I, Andrew Swenson, do solemnly swear that I will support the Constitution of the United States and the provisions of the act of Congress organizing the Territorial government of Minnesota, so help me God.

ANDREAS SWENSON.

Sworn to and subscribed before me this 28th day of July, 1854.

HARVEY WILSON,
Clerk District Court.

Stipulation of facts.

Circuit court of the United States, western district of Wisconsin.

United States of America, plff., vs. James Stinson et al., defts.

To save taking of proofs it is hereby stipulated that the following were the dates of filing of declaratory statements and dates of alleged settlement as set forth therein of the several tracts of land in controversy in this action by the several preemptors and patentees of said tracts, as hereinafter named, namely:

1. John Johnson, 1st. NW. ¼, sec. 26, T. 49, R. 14:
   Date of settlement ..... Sept. 27, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
2. Lorenz Johnson. NW. ¼, sec. 33, T. 49, R. 14:
   Date of settlement ..... Sept. 28, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
3. Sven Larson. NW. ¼, sec. 35, T. 49, R. 14:
   Date of settlement ..... Sept. 26, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
4. Peter Norell. SW. ¼, sec. 35, T. 49, R. 14:
   Date of settlement ..... Sept. 27, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
5. Andrew Swenson. SW. ¼, sec. 28, T. 49, R. 14:
   Date of settlement ..... Sept. 28, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
6. Aaron Peterson. NW. ¼, sec. 5, T. 48, R. 14:
   Date of settlement ..... Aug. 17, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
7. Martin Larson. NE. ¼, sec. 6, T. 48, R. 14:
   Date of settlement ..... Aug. 17, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
8. John Johnson, 2nd. NW. ¼, sec. 1, T. 48, R. 14:
565 Date of settlement ..... Sept. 26, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
9. Swen Magnuson. NE. ¼ sec. 2, T. 48, R. 14:
   Date of settlement ..... Sept. 26, 1854.
   Declaratory statement filed ..... Oct. 24, 1854.
10. Israel Johnson. NE. ¼ sec. 5, T. 48, R. 13:
   Date of settlement ..... June 11, 1855.
   Declaratory statement filed ..... June 22, 1855.

11. Ole Westerland. NE. ¼ sec. 4, T. 48, R. 13:
Date of settlement .....June 11, 1855.
Declaratory statement filed .....June 22, 1855.
12. Andrew Wallmark. NW. ¼ sec. 4, T. 48, R. 13:
Date of settlement .....June 11, 1855.
Declaratory statement filed .....June 22, 1855.
13. Otto Wallmark. Lots 7, 8, 9, and NW. ¼ and NE. ¼ sec. 1, T. 48, R. 14:
Date of settlement .....June 11, 1855.
Declaratory statement filed .....June 22, 1855.
14. Gustaf Johnson. Lots 1, 2, and 3, sec. 1, T. 48, R. 14:
Date of settlement .....May 21, 1855.
Declaratory statement filed .....June 22, 1855.

Further stipulated to save taking of proofs, and also to save cumbering the records in this action, that from time to time since the year 1892 actions have been begun and are now pending in the circuit court of the United States for the western district of Wisconsin, wherein James Stinson, the defendant in this action, is plaintiff, and the County of Douglass, in the State of Wisconsin, and others are defendants, the object of which actions is to set aside the taxes levied upon the lands in controversy in this action in the years 1892, 1893, 1894, 1895, 1896, and 1897, respectively; and to declare null and void and cancel the tax certificates issued against the same upon the sales held in said Douglass County in the years 1893, 1894, 1895, 1896, 1897, and 1898, and in respect to which testimony has been given herein by Michael S. Bright; that said actions are six in number, and are all still pending and undetermined, and that they involve the validity of all outstanding tax certificates against any of said lands for the years mentioned; and either party is at liberty to refer to the original files and records in said actions the same as if all had been offered in evidence and been made a part of the record herein. This stipulation is made subject to any objection to the materiality, relevancy, or competency of the evidence or facts so stipulated.

Further stipulated that in case such tax certificates are set aside by the court, the complainant in such tax suits, should he retain
566 the land as a condition of relief, will be required to pay all the valid taxes levied on said land for each of said years, together with six per cent interest, to be computed from the first day of January next succeeding the levy of taxes for each year. In case it shall appear in evidence in such suits that the levy of the taxes was invalid on account of defects going to the groundwork of the taxes and affecting the whole assessment, a reassessment would then be ordered by the court of the valid part of the taxes, and in such case no interest whatever would be charged to the complainant in any of said cases.

Dated Dec. 16, 1899.

JOHN B. SIMMONS,
Solr. for Complainants.

SPOONER, SANBORN & SPOONER,
Solrs. for Defts.

1855
24599— —— A McC.
85252— 1895 F. C.

Letter of Aug. 19, 1895.

Department of the Interior, General Land Office.

[Refer in reply to this initial: G. M. V. B.]
[Address only the Commissioner of the General Land Office.]

WASHINGTON, D. C., *Aug. 19, 1895.*

J. T. OLIVE, Esq.,
Special Land Inspector, Duluth, Minn.

SIR: The records of this Office show that on Dec. 12, 1855, Hiram Hayes transmitted 5 affidavits in relation to certain Hudson River cash entries, evidently Nos. 2906, 2908, 2907, 3208, 3210, 3211, and 3213.

Said affidavits were received Jan. 5, 1856, and reference to them is made in office letter "G" to said Hayes, of May 22, 1856, a copy of which was, I think, furnished you personally a few weeks since.

A long and careful search was made at your request for these affidavits, but they appear to have been withdrawn from the files with said cash entries, and can not be found.

Very respectfully,

E. F. BEST,
Acting Commissioner.

(Endorsed:) Commissioner G. L. O. Aug. 19 95. C. Hayes affts. not found.

567 *Certified copy of letter from Hiram Hayes to Land Office.*

G. E. P. H. I. R. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 2, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed transcript of letter dated May 28, 1856, from Hiram Hayes to the Commissioner of the General Land Office, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

BINGER HERMANN,
Commissioner of the General Land Office.

SUPERIOR, *May 28th, 1856.*

To the Hon. Commissioner of the General Land Office.

SIR: Herewith I transmit a certified copy of abstract and certificate under the hand of T. M. Fullerton, register at the Stillwater land office, showing that John Johnson, Andrew P. Walmark, Otto Walmark, and Israel Jansen, had filed their declaratory statements on lands in Minnesota Territory previous to their making preemption settlements in the vicinity of Lake Superior. You are informed already that the tracts preempted by the above-named individuals are disputed by counterclaimants, and the accompanying paper is an item of the evidence ready to be submitted in defence of the counterclaims.

I am, very respectfully,

HIRAM HAYES.

(Endorsed:) D. 45804. Hiram Hays, Superior, Wis., May 28/56, files a paper in ref. to the declaratory statements of John Johnson, Andrew P. Wallmark, Otto Wallmark, Israel Janason, at Stillwater, M. T., who, it seems, have other preemptions. Answered October 20th, 1856. See letter to R. & R., Oct. 8, 1857. Gouley. See letter from R. & R., July 31/57. Jun' 24, 1856. R. Causin, 5/211.

568 *Certified copy of letter—Commissioner of Land Office to Hiram Hayes.*

E. P. A. I. R. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 2, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed transcript of letter, dated October 20, 1856, to Hiram Hays, is a true and literal exemplification of the record of said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

BINGER HERMANN,
Commissioner of the General Land Office.

GENERAL LAND OFFICE,
October 20th, 1856.

HIRAM HAYS, *Superior, Wisconsin.*

SIR: Your letter of the 28th of September last, transmitting a certified copy of the abstracts of declaratory statements, filed at the Stillwater office, Minnesota, on lands subject to private entry, by Otto Walmark, Andrew P. Wallmark, Israel Jansin, and John Johnson, previous to their making preemption settlements in the vicinity of Lake Superior, has been received. At the time of filing these statements it was the ruling of this office that the filing of a declaratory statement for a tract of land subject to private entry did not preclude a party from filing a second time for unoffered land. This objection, therefore, is of no avail against their present claims. But even if it were, the patents in the case of Hudson, Wisconsin, entries of the three first named—3208, 3210, and 3213—were issued and transmitted to Hon. H. M. Rice on the 8th of May, 1856. This office, therefore, has no further control over them.

In the case of John Johnson, No. 3212, a reinvestigation was directed on the 16th of June last, and it is still suspended in this office.

Respectfully, your obt. servt.,

THOS. A. HENDRICKS,
Commissioner.

569 *Report of special agent of land office.*

No. 3. DULUTH, MINN., *May 19, 1885.*

Hon. WM. A. J. SPARKS,
Comr. Gen. Land Office, Washington, D. C.

SIR: Referring to my letter of Apr. 24, 1885, and your letter "P," May 7, 1885, I have the honor to report that I have examined the following described fourteen (14) preemption cash entries, all in the Bayfield, Wisconsin, U. S. land district:

Andrew Svenson—SW. ¼ of sec. 28, tp. 49 N., R. 14 W., 4 p. m.
Sven Larson—NW. ¼ of sec. 35, tp. 49 N., R. 14 W., 4 p. m.
Peter Novell—SW. ¼ of sec. 35, tp. 49 N., R. 14 W., 4 p. m.
Lorenz Johnson—NW. ¼ of sec. 33, tp. 49 N., R. 14 W., 4 p. m.
Ola Westerland—NE. ¼ of sec. 4, tp. 48 N., R. 13 W., p. m.
Andrew Walmark—NW. ¼ of sec. 4, tp. 48 N., R. 13 W., 4 p. m.
Israel Jansen—NE. ¼ of sec. 5, tp. 48 N., R. 13 W., 4 p. m.
Martin Larson—NE. ¼ of sec. 6, tp. 48 N., R. 13 W., 4 p. m.
Aron Peterson—NW. ¼ of sec. 5, tp. 48 N., R. 13 W., 4 p. m.
Otto Walmark—Lots 7, 8, and 9, and NW. ¼ NE. ¼ of sec. 1, tp. 48 N., R. 14 W., 4 p. m.
Gustof Johnson—Lots 1, 2, & 3 of sec. 1, tp. 48 N., R. 14 W., 4 p. m.
John Johnson—NW. ¼ of sec. 1, tp. 48 N., R. 14 W., 4 p. m.
Sven Mognussum—NE. ¼ of sec. 2, tp. 48 N., R. 14 W., 4 p. m.

These men were each and every one hired by James Stinson (a British subject) to preempt these lands, and none of the claimants ever established a residence on the land, and each and every claim above described was transferred by the claimant to the said James Stinson on the very day final proof was made, as shown by the records of Douglas Co., Wisconsin.

This land was entered many years ago and the patents have issued, but the land is still the property of the man who originally committed the fraud (James Stinson).

From your instructions I learn that the statutes of limitations do not run against the Government, and I am fully convinced that I can clearly establish the fraud. I have talked with a number of witnesses who know that there never was any improvements on the land, and who also know these claimants were hired to take this land by the said James Stinson.

I also know that I will have very little difficulty in finding most
570 of the claimants above mentioned. The proof in these cases, though very old, is much more easily obtained than in most of the later cases.

I am aware that time, the great soothing syrup, is the remedy for all evils, yet I consider these cases so plain that I have no hesitation in recommending that action be commenced at once to set aside these patents.

Under the circumstances it will be necessary to proceed quietly with this investigation (if it is deemed best to proceed further) for fear that the present owner of the land may convey it to a third party and then set up the defense of innocent purchaser after patent, but as the owner is the guilty party I feel confident that the land can be restored to the

public domain, although, of course, a criminal prosecution is out of the question.

The proof to establish this fraud can be obtained with very little expense, and if you deem best to proceed further with this inquiry please notify me by return mail.

Very respectfully,

WEBSTER EATON,
Special Agt. G. L. O.

(Endorsed:) Eaton's Report, 4006, Department of the Interior, L. & R. R. Div. Received Jun. 4, 1885.

A. J. B.

Certified copy of letter of June 19, 1885.

DEPARTMENT OF THE INTERIOR,
Washington, June 19, 1885.

Hon. A. H. GARLAND,
Attorney-General.

SIR: I have the honor to enclose copy of a letter of 3d instant, from the Commissioner of the General Land Office, recommending, if that course be deemed by you advisable, the institution of suit to vacate fourteen preemption patents in Wisconsin, obtained from twenty to thirty years ago, and reported fraudulent by Special Agent Webster Eaton, under date of 19th May last. Copy of report enclosed.

The propriety of investigating alleged frauds of so long ago appears to be the only question of doubt in the mind of the Commissioner. It appears, however, that no discovery of such fraud has been made until now, and as time does not run against suit in case of private individuals until discovery, and no laches can be imputed to the Government (U. S. *v.* Minor, 114 U. S., 233), I would suggest that the matter
571 be placed in the hands of the district attorney for investigation and advice, in order to specific and intelligent information upon which to base an opinion as to the proper action in the premises. If that be your judgment, Special Agent Eaton will, upon receipt of your answer, be instructed to communicate with and aid the district attorney.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

4006—1885.

I certify that the foregoing is a true copy of a letter in the files of this Department, and that I find no earlier letter on the subject-matter thereof in said files.

[SEAL.]

J. K. RICHARDS,
Acting Attorney-General.

Letter of June 3, 1885.

No. 1. DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE,
Washington, June 3, 1885.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

SIR: I have the honor to enclose herewith a copy of a report, dated May 19, 1885, from Special Agent Webster Eaton, recommending the institution of suits to set aside the patents in the thirteen Wisconsin cash entries mentioned therein.

Patents were issued on some of these entries in 1855, and on the latest in 1865. Agent Eaton states that he has not the slightest doubt but that he can clearly establish the fact that the entries were fraudulent, having been made in the interest of one James Stinson, a British subject, who is the present owner of the land, and the law as regards residence and cultivation not having been complied with.

Considering the time which has elapsed since the patents were issued, I have the honor to respectfully recommend that the honorable Attorney-General be asked for a written opinion as to the advisability of instituting suits to set aside these patents for the reasons stated.

I would also suggest, if the honorable Attorney-General is of the opinion that such suits should be instituted, that the U. S. attorney for Wisconsin be instructed to take the preliminary steps in the same, if such a course would be proper upon the information given in Agent
572 Eaton's report, so that the land may not be conveyed to a third party for the purpose of setting up the claim of innocent purchaser.

Very respectfully, your obt. servant,

WM. A. J. SPARKS,
Commissioner.

Letter of June 23, 1885.

N. T. N. R.
No. 4 (6394). DEPARTMENT OF JUSTICE,
Washington, June 23, 1885.

H. M. LEWIS, Esq.,
U. S. Attorney, Madison, Wisconsin.

SIR: At the request of the Secretary of the Interior, a copy of whose letter is enclosed, dated 19th inst., I herewith transmit to you copy of letter of the Commissioner of the General Land Office recommending the institution of suit to vacate fourteen preemption patents in Bayfield, Wisconsin, U. S. land district, obtained twenty or thirty years ago, and reported fraudulent by Special Agent Eaton, a copy of whose report, under date May 19, you will find herein. You are instructed to examine carefully into this matter, and if in your judgment a suit to vacate the patents can with propriety be brought after so long a lapse of time, you will institute it. If, on the contrary, you are of opinion after investigation that it is inadvisable to go into court, you will please report your reasons.

An early attention is invited to the case.

A. H. GARLAND,
Attorney-General.

(Endorsed:) Atty. Genl. directing suit.

Afterwards, to wit, December 26, 1899, in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

Hearing, Dec. 26, 1899.

Dec. 26th. This cause came on to be heard, and was argued by J. B. Simmons for the United States and Messrs. Spooner & Sanborn for the defendant, proofs filed, and taken under advisement.

Afterwards, to wit, February 10, 1900, filed offer by complainant of evidence, as follows:

573 *Offer of evidence by complainant, filed Feb. 10, 1900.*

Circuit court of United States, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

This cause having come on for hearing before said circuit court, Honorable Romanzo Bunn, judge of said court, presiding, on the 26th day of December, A. D. 1899, at the court room in the city of Madison, in Dane County, State of Wisconsin, and the complainant appearing by John B. Simmons, special assistant U. S. attorney, and the defendants by Hon. John C. Spooner, A. L. Sanborn, and Robert M. Bashford, the said complainant now offers the following evidence, to wit:

1. Deposition of Moses S. Gibson, included in pages 27 to 32, inclusive, of printed record.

2. All declaratory statements, preemption affidavits, and preemption proofs, either printed in full or preferred to by number, on pages 32 to 41, inclusive, of printed record, and designated as Exhibits 1 to 19, inclusive.

3. Deposition of Ambrose B. Burbank, included in record pages 124 to 168, inclusive, and an abstract of which is printed at pages 42 to 55, inclusive, of the printed record.

4. Deposition of Israel Johnson, included in record pages 170 to 180, inclusive, and an abstract of which is printed at pages 55 to 62, inclusive, of the printed record.

5. Deposition of Lorens Johnson, included in record pages 181 to 195, inclusive, and an abstract of which is printed at pages 62 to 72, inclusive, of the printed record.

6. Stipulation entered into between counsel, and printed on page 71 of the printed record.

7. Deposition of John Lonquist, included in record pages 199 to 208, inclusive, and an abstract of which is printed on pages 74 to 80, inclusive, of the printed record.

8. Deposition of Gustave Johnson, included in record pages 209 to 212, inclusive, and an abstract of which is printed on pages 80 to 82, inclusive, of the printed record.

9. Deposition of David Carleton, included in record pages 213
574 to 219, inclusive, and an abstract of which is printed on pages 82 to 86, inclusive, of the printed record.

10. Deposition of Peter M. Peterson, included in record pages 220 to 229, inclusive, and an abstract of which is printed on pages 87 to 92, inclusive, of the printed record.

11. Deposition of George R. Stuntz, included in record pages 230 to 240, inclusive, and an abstract of which is printed at pages 93 to 98, inclusive, of the printed record.

12. Deposition of John S. Moffat, included in record pages 241 to 253, inclusive, and an abstract of which is printed on pages 98 to 106, inclusive, of the printed record.

13. The deposition of the defendant, James Stinson, included in record pages 269 to 341, inclusive, and an abstract of which is printed on pages 106 to 150, inclusive, of the printed record, having been taken by the complainant in the exercise of its right of cross-examination, is offered in evidence as such cross-examination, said complainant at the same time expressly disclaiming any intention to vouch for the credibility of said witness.

14. The deposition of the defendant, Henry J. Stinson, included in record pages 342 to 364, inclusive, and an abstract of which is printed on pages 150 to 162, inclusive, of printed record, having also been taken by the complainant in the exercise of its right of cross-examination herein, is also offered in evidence by said complainant as a cross-examination of said witness, said complainant at the same time expressly disclaiming any intention to vouch for the credibility of said witness.

15. Declaration of citizenship of Peter Norell, included in record pages 554 to 555, inclusive, and a copy of which is printed in pages 250 and 251 of printed record.

16. Deposition of Levi W. Folsom, included in record pages 556 to 565, inclusive, and an abstract of which is printed at pages 252 to 258, inclusive, of the printed record.

17. Deposition of John Shallen, included in record pages 565 to 571, inclusive, and an abstract of which is printed on pages 258 to 262, inclusive, of the printed record.

18. Declaration of citizenship of Sven Larson, marked Exhibit A–7, and found at record page 575, and printed on page 265 of the printed record.

19. Declaration of citizenship of Lorens Johnson, marked Exhibit A–8, found at record page 577, and printed on pages 266 and 267 of the printed record.

20. Affidavit of Peter Norell, marked Exhibit A–6, found at record pages 572 to 574, inclusive, and a copy of which is printed on pages 263 to 265, inclusive, of the printed record.

575 21. Deposition of Urgelle Gouge, included in record pages 580 to 603, inclusive, and an abstract of which is printed on pages 268 to 283, inclusive.

22. Deposition of Hiram Hayes, included in record pages 603 to 607, inclusive, and an abstract of which is printed on pages 283 to 286, inclusive, of the printed record.

23. Warranty deed from Peter Norell to James Stinson, dated October 24, 1854, and found at record pages 633 and 634.

24. Second deed from Peter Norell to James Stinson, bearing date June 20, 1856, acknowledged before Levy W. Folsom, and identified by him in his deposition found at record page —.

25. Deposition of Lorens Johnson, taken in the case of Gagnelius against Stinson, included in record pages 758 to 759, inclusive, and printed on pages 307 to 309, inclusive, of the printed record. This deposition is offered in connection with the cross-examination of George N. Hillman, whose deposition was taken on the part of the defendants herein, and the offer is conditional upon the deposition of said Hillman being offered in evidence by the defense.

26. The answer of the defendant, James Stinson, in the action brought against him by J. E. Gagnelius and included in record pages 763 to 767, inclusive, and printed on pages 310 to 313, inclusive, of the printed record. Also stipulation by counsel as to the nature of said action and the form and contents of the complaint therein, found at page 247 of the printed record.

27. All declaratory statements, preemption proofs, and preemption affidavits included in record pages 768 to 772, inclusive, and copies of which are printed on pages 314 to 316, inclusive, of the printed record.

Stipulation as to dates of settlement and dates of filing declaratory statements by the several entrymen or preemptors named in the complaint, and other facts relating to tax litigation affecting the lands in controversy, included in record pages 772 to 775, inclusive, and printed on pages 317 to 319, inclusive, of printed record.

28. Letters as follows:

E. F. Best, Acting Commissioner of the General Land Office, to J. T. Olive, special land inspector, bearing date August 19, 1895.

Letter from Hiram Hayes to the Commissioner of the General Land Office, bearing date May 28, 1856.

Letter from Thomas A. Hendricks, Commissioner of the General Land Office, to Hiram Hayes, bearing date October 20, 1856.

Letter from Webster Eaton, special agent of the General Land Office, to Honorable William A. J. Sparks, Commissioner of the General Land Office, bearing date May 19, 1885.

576 Letter from H. L. Muldrow, Acting Secretary, to Hon. A. H. Garland, Attorney-General, bearing date June 19, 1885.

Letter from Hon. A. J. Sparks, Commissioner of the General Land Office, to Hon. L. Q. C. LeMar, Secretary of the Interior, bearing date June 3, 1885.

Letter from Hon. A. H. Garland, Attorney-General, to H. M. Lewis, United States attorney, at Madison, Wisconsin, bearing date June 23, 1885.

Which letters are included in record pages 775 to 792, inclusive, and copies of which are printed on pages 319 to 325, inclusive, of the printed record.

29. Stipulation entered into at the opening of the trial to the effect that Moses S. Gibson, one of the witnesses on the part of the complainant, was a candidate for State senator against one William J. Gibson during the campaign of 1854, and that said William J. Gibson defeated him for said office in that year, and served as a member of the State senate during the two years next succeeding.

30. Stipulation also entered into at the opening of the trial that all declaratory statements, preemption proofs, and preemption affidavits filed in connection with the several entries involved in this action, and

which can now be found, have been introduced in evidence by the complainant, and that the remaining declaratory statements, affidavits, and proofs have been lost.

JOHN B. SIMMONS,
Special Assistant United States Attorney.

(Endorsed:) Circuit court of United States, western district of Wisconsin. United States of America, plaintiff, vs. James Stinson and Henry J. Stinson, defendants. Offer by complainant of evidence. John B. Simmons, asst. attorney for complainant. Filed Feb. 10, 1900. F. W. Oakley, clerk. Original.

On same day, to wit, February 10, 1900, filed objections by complainant to evidence, as follows:

577 *Objections of complainant, filed Feb. 10, 1900.*

Circuit court of the United States, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

Now comes the above-named complainant, by John B. Simmons, special assistant United States attorney, and objects to the following evidence offered on the part of the defendants:

1. Said complainant objects to each and every of the interrogatories propounded to the witness, Lorens Johnson, regarding a certain deposition given by him in the ejectment action of Gagnelis against Stinson, which interrogatories are found on pages 69, 70, and 71 of the printed record, on the ground that said interrogatories, and each of them, are immaterial, irrelevant, and incompetent, and also for the reason that if intended to lay the foundation for impeaching testimony, as the deposition is in writing and subscribed by the witness, the proper method of examination is by exhibiting to the witness the deposition, identifying, and offering the deposition in evidence. The answers to said interrogatories are objected to for similar reasons.

2. Complainant renews the objection to the question propounded to James Stinson with reference to the authority given by him to John Johnson, which objection is found at page 145 of the printed record.

3. Complainant renews the objections, and each of them, in'erposed at the taking of the deposition of Otto Wallmark, found at pages 163, 166, 167, 168, 171, and 191 of the printed record.

4. Complainant objects to the interrogatories propounded to the witness, George N. Hillman, and the testimony given by him, found on pages 195 to 197, inclusive, of the printed record, concerning certain testimony said to have been given by the witness, Lorens Johnson, in the ejectment action of Gagnelius against Stinson, on the ground that said interrogatories, and each of them, and the said testimony given in answer to said interrogatories, and to each of them, is incompetent, irrelevant, and immaterial, and also on the ground that no proper foundation for the same had been laid.

5. Complainant objects to all interrogatories propounded to the witness, James Bardon, and all testimony given by him as to the value of the lands in controversy—said testimony being found on pages
578 234 to 236, inclusive, of the printed record, on the ground that said interrogatories and the answers thereto are immaterial, irrelevant, and incompetent.

6. Complainant objects to each and every of the interrogatories propounded to the witness, Michael S. Bright, and the testimony given by him in answer thereto, touching the amount of taxes paid on the lands in controversy by the defendant, James Stinson, or the amount of unpaid taxes on said lands, or the sales of said lands for taxes, or the execution of tax deeds thereon, and any and all other proceedings in connection with the taxation of said lands, which interrogatories and testimony are found on pages 237 to 240, inclusive, of the printed record, on the ground that said interrogatories, and each of them, and the answers thereto, and to each of them, are immaterial, irrelevant, and incompetent.

7. Complainant also objects to the several deeds offered in evidence in connection with the deposition of said witness, Michael S. Bright, which deeds are described on pages 238, 239, 240, and 241 of the printed record, and to each and every of them, on the ground that said deeds are, and each of them is, immaterial, irrelevant, and incompetent.

8. Complainant further objects to the interrogatories, and each of them, found on page 261 of the printed record, and also to the answers to said interrogatories, and each of them, relating to either the social or political standing or character of Otto Wallmark, on the grounds that the same is not proper cross-examination and is immaterial, irrelevant, and wholly incompetent.

9. Complainant further objects to the interrogatories, and each of them, and to all testimony given in answer to said interrogatories propounded to the witness, Urgelle Gouge, found on pages 276, 277, 278, 281, and 282 of the printed record, said interrogatories and testimony relating to the character of the soil in the vicinity of Superior—the notice published by said Gouge relating to his contest of the claim of Israel Johnson—also with reference to any other claim or claims taken, or attempted to be taken, by him, or as to the character of other claim shanties seen by him not being upon the lands in controversy, and hereby renews the objections to all such interrogatories and testimony which were interposed at the taking of the deposition of said witness.

10. Complainant hereby renews the objections interposed at the taking of the deposition of Hiram Hayes and found at page 285 of printed case.

11. Complainant objects to the letter purporting to be written by Hiram Hayes to the Commissioner of the General Land Office
579 under date of January 24, 1856, and found at page 207 of the printed record, on the ground that it is immaterial, irrelevant, and incompetent.

12. Plaintiff objects to the letter by Hon. Thomas A. Hendricks, Commissioner of the General Land Office, to Hiram Hayes, under date of May 22, 1856, and found at pages 287 and 288 of the printed record, on the ground that it is immaterial, incompetent, and irrelevant.

13. Complainant objects separately to each of the notices of contest said to have been published in the Superior Chronicle, and found at pages

288 and 289 of the printed record, on the ground that said notices, and each of them, are immaterial, irrelevant, and incompetent.

14. Complainant objects to the declaration of trust signed by James Stinson, and found at page 294 of the printed record; also to the will of Thomas Stinson found at page 285 of printed record; to wills of Henry A. and John Stinson, found at page 296 of printed record, the record of partition in chancery found at page 297, and the subsequent conveyances between the heirs of Thomas Stinson, deceased, found at pages 298 and 299 of the printed record, on the ground that said documents, and each of them, are immaterial, irrelevant, and incompetent.

15. Complainant objects to so much of the stipulation found on page 300 of the printed record commencing with the words "That no testimony was ever taken in said suit," and ending with the words "and the injunction vacated and dissolved," on the ground that the matters set set forth in said portion of the stipulation are immaterial, irrelevant, and incompetent.

16. Said complainant also objects to the evidence offered on the part of defendants, and found on pages 301 to 303, inclusive, relating to certain tax proceedings in connection with the lands in controversy, on the ground that said evidence so offered, and each and every part thereof, is immaterial, irrelevant, and incompetent.

17. Said complainant also hereby renews any and all objections to interrogatories or testimony, interposed at the time of taking any of the depositions herein, and not hereinbefore specifically mentioned or repeated, and moves to strike out all evidence objected to, whether such objection is contained herein or was so taken at the time.

JOHN B. SIMMONS,
Special Assistant United States Attorney.

580 (Endorsed:) 279 Circuit court of the United States, western district of Wisconsin. United States of America, plaintiff, vs. James Stinson and Henry J. Stinson, defendants. Objections by complainant to evidence. John B. Simmons, asst. attorney for complainant. Filed Feb. 10, 1900. F. W. Oakley, clerk.

Notice of motion for intervention filed Mch. 31, 1900.

Afterwards, to wit, March 31, 1901, filed notice of motion and petition for intervention, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

To Hon. D. F. Jones, U. S. dist. atty., and John B. Simmons, esq., special counsel, solicitors for complainants:

Please take notice, that upon the verified petition of Michael S. Bright, a true copy of which is hereto attached, and upon the records and proceedings in the above-entitled cause, the said petitioner will, on Saturday,

the 31st day of March, 1900, at the opening of court upon that day, or as soon thereafter as counsel can be heard, move the court for an order permitting petitioner as such receiver to become a party defendant in the above-entitled cause, and for such other and further order and relief as to the court may seem just and equitable.

Dated Madison, March 26, 1900.

Yours, &c.,

SANBORN, LUSE, ELLIS & POWELL,
Solicitors for Petitioner.

Due service of the within notice and motion papers admitted this 26th day of March, 1900.

_____, _____,
Solicitors for Complainant.

581 *Petetion for intervention, filed March 31, 1900.*

Circuit court of the United States, for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

The petition of Michael S. Bright, of Superior, Wisconsin, respectfully shows to the court as follows:

On the 17th day of February, 1900, one Rufus B. Smith commenced against the defendant James Stinson a creditors' bill in the circuit court of the United States for the northern district of Illinois, of which district said defendant was then and is a resident, on the equity side of said court, and such proceedings were had in said suit that your petitioner was by said court appointed receiver of all the property, credits, and effects of said James Stinson, and required to give bond to such receiver for fifteen thousand dollars, which bond has been duly given by your petitioner and approved by said court and filed in the clerk's office; and petitioner has entered upon the performance of the duties of such trust and is now engaged therein.

On the 19th day of February, 1900, a like creditors' suit was begun by said Smith against said James Stinson in this court by original bill, but ancillary to the proceeding in the northern district of Illinois, and such proceedings were had in said suit in this court that on the same day your petitioner was appointed therein by this court as receiver of all the property of said James Stinson in this State, and this court thereupon took ancillary jurisdiction in aid of said suit in the northern district of Illinois, and required a bond for five thousand dollars from your petitioner, which has been duly given and filed herein and approved by a judge of said court.

Petitioner has taken possession of all books and papers of said Stinson, and is in possession of all securities given by the defendant Henry J. Stinson to James Stinson upon the lands in suit, except those which are alleged to have been negotiated by said James Stinson prior to the filing of the bill by complainants herein. The amount of the securities so given by Henry J. Stinson amounts to much more than the total value

of the land in question in this suit, and, although said Henry J. Stinson is a party defendant herein, he does not now intend to further defend the same, as your petitioner is informed and believes.

582 The defendant James Stinson has no money or property, by reason of this receivership, with which he can continue the defense of this action, and is unable to continue to employ counsel for that purpose.

Your petitioner further shows that the amount of debts and claims existing against said James Stinson is approximated as follows, in addition to the claim of the plaintiff:

Claims of depositors against James Stinson, at Hamilton, Ontario	$249,938.22
Other claims	337,812.58
Total	587,750.80

The above statement is substantially accurate as to the sums due depositors at Hamilton, but is only approximate as to other claims.

The said depositors have no security for their claims except that they claim that certain of the securities assigned by James Stinson to John T. Glasscoe, of Hamilton, are held by him in trust for them.

The amount of said $337,812.38, which is secured by mortgages or pledges, is about $254,100.38, as near as petitioner is able to say at this time.

In addition to the above claims, the taxes upon the lands of said Stinson covered by said receiverships, and by the ancillary receivership instituted in the district of Minnesota, Feb. 19, 1900, now due and unpaid, amount to about $200,000.

Your petitioner states that the lands in suit herein constitute the main part of the assets of the trust available for the payment of the creditors of said James Stinson, and if it shall finally be decided that the patents of said lands must be set aside the unsecured creditors of said Stinson will receive little or nothing upon their claims.

On the 23d day of March an order was made in said court of primary jurisdiction authorizing petitioner to intervene in this suit, subject to the order and discretion of this court.

Wherefore petitioner prays that he may be allowed to intervene in this suit, and be made a party defendant herein, and authorized to defend this suit to the same extent as the said James Stinson might have done if said receivership had not been instituted, and that such further order or relief may be granted herein as shall be proper.

MICHAEL S. BRIGHT,
Receiver Petitioner.

583 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

Michael S. Bright, being duly sworn, on oath says that he has heard read the foregoing petition and that the same is true to the best of his knowledge and belief.

Subscribed and sworn to before me this 23d day of March, 1900.

W. E. FAGG,
Notary Public, Wisconsin.

(Endorsed:) 179 U. S. circuit court, west. district of Wisconsin. The United States vs. James Stinson et al. Notice of motion and petition for intervention. Received copies of within notice and petition March 26, 1900. John B. Simmons, counsel for complainants. Filed Mch. 31, 1901. F. W. Oakley, clerk.

Order of April 11, 1901, allowing Michael S. Bright to intervene.

Afterwards, to wit, April 11, 1900, filed order permitting Michael S. Bright to intervene as a party defendant, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON AND HENRY J. STINSON, DEFENDANTS.

On this day the petition of Michael S. Bright, receiver of the defendant James Stinson came on to be heard, L. K. Luse appearing for the petitioner and John B. Simmons for the complainants. And it appearing to the court that the allegations of the petition are true, it is thereupon ordered that the said Michael S. Bright be, and he is hereby, permitted to intervene in this cause, and to continue the defense thereof through his solicitors, and that the said Michael S. Bright, as such receiver, be, and he is hereby, brought in as a party defendant, and that this cause shall hereafter proceed in the name of The United States of America, complainants, vs. James Stinson, Henry J. Stinson, and Michael
584 S. Bright, as receiver of James Stinson, defendants, and that the said receiver may take such proceeding in said cause in this court or elsewhere as he shall be advised are proper and material.

Dated March 31, 1900.

By the court: R. BUNN, *Judge.*

(Endorsed:) 279 chancery. Circuit court of United States, western district of Wisconsin. The United States of America, complainants, vs. James Stinson and Henry J. Stinson, defendants. Order. Filed Apr. 11, 1900. F. W. Oakley, clerk.

Order of June 4, 1900, dismissing bill of complaint.

Afterwards, to wit, June 4, 1900, in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

This day came the court, and being duly advised in the premises it is ordered that the bill of complaint therein be, and the same is hereby, dismissed.

Exceptions to decision filed June 30, 1900.

Afterwards, to wit, June 30, 1900, filed exceptions to decision of circuit court, as follows:

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JAMES STINSON ET AL., DEFENDANTS.

Now comes the United States of America, complainant in the above-entitled action, by John B. Simmons, special assistant United States attorney, and excepts to the decision and order of said circuit court in the above-entitled action, filed and entered on the 4th day of June, A. D. 1900, directing the dismissal of the complaint in said action for the reasons:

1. That the same is contrary to law.

2. That the same is not conformable to equity.

585 3. That the same is contrary to the evidence in the case, and is against the clear weight and preponderance of said evidence.

4. For that the evidence in said case clearly proved that the several patents referred to in the complaint, and to set aside and vacate which said action was brought, and each of them, were obtained by fraud, and that in each of said cases the entries were not made in good faith for the benefit of the entrymen, respectively, but in each case the defendant James Stinson hired and procured the preemptor and patentee to preempt the lands for the benefit of said Stinson, to whom the same were conveyed immediately after the entry thereof, and that there was no settlement upon, improvement, or cultivation of said lands, as required by the preemption laws under which the same were entered and patented, but the preemption proofs filed in respect to each of the tracts described in said complaint were false and fraudulent, and were known so to be by the said James Stinson, and were fraudulently procured to be made by him for the purpose of obtaining the title to said lands, as set forth in the complaint.

5. For that the evidence adduced on the trial of said action particularly shows and clearly establishes that each and all of said entries referred to in the complaint, in which settlements were alleged to have been made in the year 1854, were fraudulently procured to be made by the said James Stinson for his own benefit, and the preemption proofs filed in connection therewith were false and fraudulent, and known so to be by the said James Stinson, and by him fraudulently procured to be made for the purpose of fraudulently obtaining the title to said lands, as set forth in the complaint.

6. For that, in respect particularly to the entries referred to in the complaint made by Aaron Peterson, Martin Larsen, Sven Magnuson, and John Johnson, second, wherein the settlements and occupation were alleged to have been commenced in 1854, and the lands were entered in 1855, the clear and undisputed evidence shows that the lands so entered were not entered in good faith by the preemptors named for their own benefit, but were entered solely for the benefit of the said James Stinson

and under his employment and procurement; that said preemptors never resided upon or improved or cultivated any of said lands; that immediately after entering upon the same they abandoned said lands and returned to their homes in the State of Minnesota, and never thereafter returned to the same; that at the time of making entry of said lands they were not residing thereon, and had not been upon said lands or within the State of Wisconsin for nearly ten months prior to making said entries; that the preemption proofs made by them in respect to said lands were false and fraudulent, and were known so to be by the said
586 James Stinson, who was familiar with all the facts with respect thereto, and that said proofs were fraudulently procured to be made by said Stinson for the purpose of defrauding the plaintiff out of said lands and fraudulently procuring the title thereto himself, as alleged in the complaint.

7. For that, in respect particularly to the entry referred to in the complaint made by Israel Johnson in the year A. D. 1855, the evidence clearly establishes that the same was not made in good faith for the benefit of said Israel Johnson, but was fraudulently procured to be made by the said James Stinson for his own benefit; that he employed and hired the said Israel Johnson to make the same; that the said Israel Johnson never settled upon said lands in good faith; that he never resided upon, improved, or cultivated the same, as alleged in the preemption proofs, but that said preemption proofs were false and fraudulent, and were known so to be by the said James Stinson, who fraudulently procured the same to be made for the purpose of defrauding complainant out of the lands so entered, and of fraudulently obtaining the title thereto himself, as alleged in the complaint.

Dated Racine, Wisconsin, June 30, A. D. 1900.

JOHN B. SIMMONS,
Special Assistant U. S. Attorney.

(Endorsed:) United States circuit court, western district of Wisconsin. United States of America, plaintiff, vs. James Stinson et al., defendants. Exceptions to decision of circuit court. John B. Simmons, 436–438 Main St., Racine, Wisconsin. Asst. attorney for United States. Filed June 30, 1900. F. W. Oakley, clerk. Original.

Afterwards, to wit, July 21, 1900, filed stipulation for withdrawal of original documents, as follows:

587 *Stipulation for withdrawal of original documents, filed July 21, 1900.*

Circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA, Complainant,
vs.
JAMES STINSON AND HENRY J. STINSON, Defendants.

It is hereby stipulated that the following-described documents introduced in evidence in the above entitled action and now forming part of the record in said action on file in the office of the clerk of the circuit

court of the United States for the western district of Wisconsin, being original filed of the General Land Office at Washington, D. C., furnished by the officials of said land office to be used as evidence in said action, may be withdrawn from the files of this court and returned to said General Land Office at Washington, D. C., and that complainants shall furnish as soon as practicable true copies of said documents so withdrawn from the files, duty certified by the proper official of said General Land Office, which said certified copies shall be delivered to and filed with the clerk of this court, there to remain and be made part of the record in said above-entitled action in lieu of said originals.

The following are the documents herein above referred to:

1. Preemption declaratory statement of Otto Walmark, dated June 22, 1855, marked Exhibit "1."

2. Preemption declaratory statement of Andrew Walmark, dated June 11, 1855, and marked Exhibit "2."

3. Preemption declaratory statement of Gustave Johnson, dated May 21, 1855, marked Exhibit "3."

4. Preemption declaratory statement of Israel Johnson, dated June 11, 1855, marked Exhibit "4."

5. Preemption affidavit of Sven Larsen, dated October 24, 1854, marked Exhibit "5."

6. Affidavit of Lorens Johnson forming part of the preemption proofs of Andraes Svenson, dated October 24, 1854, marked Exhibit "6."

7. Affidavit of Sven Larsen bearing date October 24, 1854, forming part of the preemption proofs of Peter Norell, marked Exhibit "7."

8. Affidavit of Otto Walmark bearing date June 22, 1855,
588 forming part of the preemption proofs of Gustave Johnson and marked Exhibit "8."

9. Affidavit of Peter Norell, bearing date October 24, 1854, forming part of the preemption proofs of Sven Larsen and marked Exhibit "9."

10. Affidavit of Aaron Peterson and John Johnson, bearing date June 18, 1855, being proof of citizenship of Andraes Svenson and forming part of his preemption proofs, marked Exhibit "10."

11. Affidavit of John Johnson, bearing date June 22, 1855, forming part of the preemption proofs of John Johnson (known as John Johnson, 2nd) and marked Exhibit "11."

12. Affidavit of Martin Larsen and 'ohn Johnson, bearing date September 26, 1854, as to citizenship of Sven Larsen, and forming part of his preemption proofs, marked Exhibit "12."

13. Preemption affidavit of Andreas Svenson, bearing date October 24, 1854, marked Exhibit "13."

14. Affidavit of Andreas Svenson, bearing date October 24, 1854, and forming part of the preemption proofs of Lorens Johnson, marked Exhibit "14."

15. Affidavit of Martin Larsen and John Johnson as to citizenship of Lorens Johnson, dated September 28, 1854, and marked Exhibit "15."

16. Preemption affidavit of Lorens Johnson, bearing date October 24, 1854, and marked Exhibit "16."

17. Preemption affidavit of John Jo*hn*son (known as John Johnson, 1st), dated October 24, 1854, and marked Exhibit "17."

18. Preemption affidavit of Peter Norell dated October 24, 1854, and marked Exhibit "18."

19. Affidavit of Andreas Svenson, bearing date October 24, 1854, and forming part of the preemption proofs of John Johnson (known as John Johnson, 1st), marked Exhibit "19."

20. Declaration of citizenship of Peter Norell, dated August 7, 1854, and marked Exhibit "A-1," followed by the initials "W. O. H."

21. Declaration of citizenship of Sven Larsen, bearing date August 8, 1854, and marked Exhibit "A-7."

22. Declaration of citizenship of Lorens Svenson, bearing date August 8, 1854, marked Exhibit "A-8."

23. Preemption declaratory statement of Sven Larsen, bearing date October 21, 1854, appearing as Document No. 180 in the printed record in this case.

24. Preemption declaratory statement of Peter Norell, bearing date October 21, 1854, appearing as Document No. 181 in printed record.

589 25. Preemption declaratory statement of Lorens Johnson, bearing date October 24, 1854, appearing as Document No. 182 in printed record.

26. Preemption declaratory statement of John Johnson, bearing date October 21, 1854, printed at page 315 of printed record.

27. Declaration of citizenship of Andrew Svenson, bearing date July 28, 1854, printed at page 316 of printed record.

Dated, Madison, Wisconsin, July 21, A. D. 1900.

JOHN B. SIMMONS,
Special Assistant United States Attorney and Solicitor for Complainant.

SPOONER, SANBORN & SPOONER,
Solicitors for Defendants.

(Endorsed:) Circuit court of United States, western district of Wisconsin. United States of America, plaintiff *vs.* James Stinson et al., defendants. Stipulation for withdrawal of original documents. John B. Simmons, 436–438 Main St., Racine, Wisconsin, Asst. Attorney for plaintiff. Filed Jul. 21, 1900. F. W. Oakley, clerk (original). Received papers within described, except Nos. 20, 21, and 22, of which copies only appear to be on file, July 21, 1900. John B. Simmons, special Asst. U. S. Atty.

Decree, Dec. 15, 1900.

Afterwards, to wit, December 15, 1900, filed and entered decree, as follows:

Circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON AND HENRY J. STINSON. and Micheal S. Bright, as receiver of said James Stinson.

At a regular term of the circuit court of the United States, begun and held at the United States court-house, in the city of Madison, in said

district, and on the first Tuesday of December, A. D. 1899, the following, among other proceedings, were had:

590 Present and presiding the honorable Romanzo Bunn, district judge.

This case came on at this term to be heard, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

This cause having been fully argued by counsel, upon all the testimony, depositions, documents, papers, and exhibits on file, and having been taken under advisement by the court; and the court having thereon found that it is not true, as alleged in the bill, that the defendant, James Stinson, with the intention of cheating or defrauding complainants out of their title to the lands in question, or otherwise, paid any money or incurred any expenses necessary for so doing, or employed, or hired, or procured the persons mentioned in the bill or any others, by or under his direction, control, or management, or otherwise, to fraudulently or otherwise preempt, enter, or secure patents from the United States for the lands described in the bill; and having found that none of the allegations of the bill in respect to the frauds therein alleged to have been committed by said Stinson are true, and that the said bill is without equity;

And it having been further found by the court that the lands described in the bill were preempted and entered by the persons therein named for their own use and benefit and not for the benefit of said James Stinson or any other person, and that after the same were so entered by said persons they exercised their legal right to sell and convey the same, and did sell and convey the same to said Stinson at an advanced price over and above what they paid to the officers of the United States upon their premises, said advance being in the average about $70 for each quarter section so preempted. And the court having found that by so doing the said preemptors devoted said land to their own use, and to the only use to which the same was suited, the said lands being unfit for cultivation, covered by tamarack swamp, very wet, and without drainage;

And the court having found upon said hearing that of the fourteen preemptors whose names are mentioned in the bill either six or seven of them are dead, and that the complainants, in taking their testimony, called only two or three of said preemptors, it not clearly appearing whether the witness John Lonquist was or was not a preemptor, he having testified that he never preempted any land, and two of said preemptors, now living, not having been called by either party as a witness, one of them being quite feeble in health, and the testimony in support of the allegations of the bill being of an extremely doubtful, contradictory, and uncertain character, several of the witnesses having given

591 conflicting statements as to the matters about which they were interrogated; and the said James Stinson having both in his sworn answer and in his testimony produced at the hearing positively and explicitely denied all the allegations of the bill, thereby fully meeting all the charges of fraud contained in the bill with full and explicit denial, and the court having found that the said Stinson has answered fully and that his denial of the bill alleging a fraud upon the United States has not been overcome by the testimony of two witnesses, or one witness and corroborating circumstances, equivalent in weight to the testimony of another witness; and the court having found generally that the testimony

and evidence by which it is sought to set aside the patents in question is not clear, unequivocal, nor convincing, as is required in such cases;

And it having been further found that while the improvements made by the preemptors upon said land were of a temporary and unsubstantial character, yet they were substantially the same as the great majority of like improvements made by settlers upon the public lands in the region in which they were made at that time, and that their character was known at the time to the land officers of the United States by them to be sufficient, and that the evidence does not show that the said James Stinson had any knowledge of the character thereof;

It is, therefore, considered and adjudged, as aforesaid, that the bill of the United States against the defendants, James Stinson and Henry J. Stinson, do stand dismissed out of this court, but without costs.

Dated, November 30, 1900.

By the court:

R. BUNN, *Judge.*

(Endorsed:) 279 B. circuit court of the United States, western district of Wisconsin. United States of America vs. James Stinson et al. Decree. Filed, Dec. 15, 1900. F. W. Oakley, clerk.

Afterwards, to wit, May 22, 1901, came the complainants by their solicitors and filed petition and order al'owing appeal as follows:

592 *Petition for appeal filed May 22, 1901.*

The circuit court of the United States of the western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON AND Michael S. Bright, as receiver of the said James Stinson, defendants. } In equity.

The above-named complainants, The United States of America, conceiving themselves aggrieved by the decree made and entered on the 30th day of November, A. D. 1900, in the above-entitled cause, wherein and whereby it was adjudged that said complainants' bill of complaint against the defendants, James Stinson and Henry J. Stinson, do stand dismissed out of court, do hereby appeal from said order and decree to the United States circuit court of appeals for the seventh circuit, for the reasons specified in the assignment of errors which is filed herewith, and do pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the said United States circuit court of appeals for the seventh circuit aforesaid.

Dated, May 22d, A. D. 1901.

P. C. KNOX,
United States Attorney-General,
And JOHN B. SIMMONS,
Special Assistant United States Attorney,
Solicitors for Complainants.

The foregoing claim of appeal is allowed.
Dated, May 22, A. D. 1901.

R. BUNN, *Judge.*

(Endorsed:) Chan. 279 B. circuit court of United States for western district of Wisconsin, United States of America, complainants, vs. James Stinson, Henry J. Stinson et al. defendants. Appeal to United States circuit court of appeals. John B. Simmons, asst. attorney for complainants. Filed May 22, 1901. F. W. Oakley, clerk.

593 *Assignment of errors, filed May 22, 1901.*

On the same day, to wit, May 22, 1901, filed assignments of error on appeal, as follows:

The circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON AND HENRY J. STINSON, AND MICHAEL S. BRIGHT, as receiver of said James Stinson, defendants. } In equity.

ASSIGNMENT OF ERROR ON APPEAL.

Come now the above-named complainants, The United States of America, and file the following assignment of errors upon which they will rely upon their appeal from the decree made by this honorable court on the 30th day of November, A. D. 1900, in the above-entitled cause.

The United States circuit court for the western district of Wisconsin, which entered the decree of dismissal of complainants' bill in said cause, erred as follows:

1.

In holding and deciding that the defendant, James Stinson, did not with the intention of cheating or defrauding complainants out of their title to the land in question or otherwise, employ, hire, or procure the persons mentioned in the bill of complaint or others, by or under his direction, control or management, or otherwise, to fraudulently or otherwise preempt, enter, or obtain patents from the United States for the lands described in said bill, or any of them.

2.

In holding and deciding that said defendant, James Stinson, did not pay any money or incur any expense in procuring the fraudulent
594 preemption or entry of the lands described in the bill of complaint, and that he committed none of the frauds charged in said bill.

3.

In holding and deciding that the lands described in the bill were preempted and entered by the persons therein named for their own use and benefit, and not for the benefit of said James Stinson, or any other person.

4.

In holding and deciding that after said lands had been legally and in good faith entered by said persons named in the bill, said preemptors exercised their legal right to sell and convey the same to said James Stinson, and that they did so sell and convey the same at an advance averaging about seventy dollars ($70) for each quarter section so entered, over and above the amounts paid therefor to the officers of the United States.

5.

In holding and deciding that by their sale and conveyance of the lands described in the bill to James Stinson, the said preemptors devoted said land to their own use, and that said lands were unfit for cultivation, swampy, and without drainage, and were unsuited to any other use.

6.

In holding and deciding that the defendant, James Stinson's answer denying, under oath, the charges of fraud contained in the bill, has not been overcome by the evidence of two witnesses, or by the evidence of one witness and corroborating circumstances equivalent in weight to the testimony of another witness, and also in holding and deciding that such amount and weight of evidence is required to overcome such denial.

7.

In holding that the evidence on the part of complainants, by which it was and is sought to set aside the patents in question, is not clear, unequivocal, and convincing as required in such cases, but is of an extremely doubtful, contradictory, and uncertain character.

595 8.

In holding and deciding that the improvements made by the several preemptors upon the lands in question, though temporary and unsubstantial, were practically the same as those made by a great majority of settlers on the public lands at the time and in the region when and where they were made, and, that their character was known to the land officers of the United States, and was pronounced by them to be sufficient.

9.

In holding and deciding that the defendant, James Stinson, had no knowledge of the character of the improvements made by the several preemptors on the lands in controversy, or any of them.

10.

In holding and deciding that the complainants' bill is without equity and in dismissing the same.

11.

In not making, rendering, and entering a decree, adjudging void and cancelling the preemption entry of John Johnson (described in the bill of complaint as the first John Johnson) of the northwest quarter of section twenty-six (26), in township forty-nine (49) north, of range fourteen (14) west, of the fourth principal meridian in Douglas County, State of Wisconsin, also the patent certificate and patent issued to said first John Johnson for said parcel, and the several conveyances of the same referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in said bill of complaint and clearly established by the evidence, which showed the facts in relation thereto to be as follows:

a. The defendant, James Stinson, employed, hired, caused and procured the said John Johnson to fraudulently preempt, enter and obtain a patent for said lands, and the said John Johnson, pursuant to such hiring and employment and under the direction and control of said James Stinson, did fraudulently preempt, enter and obtain a patent for the same, not in good faith to appropriate the said lands to his own exclusive use, but for the use and benefit of the said Stinson and in order that the title he might acquire thereto, might be conveyed to the latter.

596 b. The said John Johnson never made any settlement in person, or bona fide, upon said lands, and never inhabited, improved, cultivated, or resided upon the same, as required by the preemption laws, and his preemption and entry of the said lands was in violation of the provisions and contrary to the purpose and intent of said laws and was therefore void.

c. The said John Johnson procured the entry of said lands and the title to the same by filing with the register and receiver of the United States land office, where said lands were subject to entry, a false and fraudulant declaratory statement, and a false and fraudulent preemption affidavit and other false and fraudulent affidavits of corroborating witnesses, whereby he made it appear to said register and receiver and deceived them into believing that he had settled in person upon said lands, in good faith, to appropriate the same to his own exclusive use, and not to sell the same upon speculation; that he had made no contract or agreement, direct or indirect, whereby the title which he might acquire thereto should inure to the benefit of any other person beside himself, and that he had made substantial and permanent improvements thereon, had cleared, planted and cultivated the same, and was actually residing upon and inhabiting the same at the time of procuring such entry, all which representations he knew to be untrue.

d. The defendant, James Stinson, caused and procured the said false and fraudulent declaratory statement, preemption affidavit and preemption proofs of the said John Johnson to be made and filed in the said United States land office, well knowing the same to be untrue and fraudulent, to the end that he might defraud complainants out of their title to said lands, and obtain the title thereto himself by conveyance from the said John Johnson.

e. The defendant, James Stinson, received a conveyance of said lands from said pretended preemptor, John Johnson, on the very date of entry of the same in the United States land office, and pursuant to a previous

agreement between himself and said Johnson, and with notice that the latter had not settled upon, improved or entered the same in good faith to appropriate said lands to his own exclusive use.

f. Said defendant, James Stinson, received his conveyance of said lands, with notice that the said John Johnson had made no settlement upon the same, nor improved, inhabited, cultivated or resided upon the same, as required by the preemption laws, and that the declaratory statement and preemption proofs by means of which said Johnson's entry was procured as aforesaid, were in these respects false and fraudulent.

597 g. The conveyance of said lands by said James Stinson to the defendant, Henry J. Stinson, his son, was merely colorable and without consideration, and said conveyance and the mortgage back executed by said Henry J. Stinson were made for the express purpose of hindering and delaying complainants in their remedies for the recovery of said lands and to defraud complainants out of their title to the same, and the said Henry J Stinson, at the time of taking such conveyance, had knowledge of all the facts herein stated regarding the preemption, entry, and patenting of said lands, and the conveyance of same to said James Stinson, and well knew that the latter held his title thereto in fraud of the rights of complainants.

12.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Lorenz Johnson of the northwest quarter of section thirty-three (33), in township forty-nine (49) north, of range fourteen (14) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Lorenz Johnson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

13.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Sven Larson of the northwest quarter of section thirty-five (35), in township 49 north, of range 14 west of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Sven Larson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

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14.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Peter Norell of the southwest quarter of section thirty-five (35), in township 49 north, of range 14 west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Peter Norell for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same *is* in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

15.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Andrew Svenson of the southwest quarter of section twenty-eight (28), in township 49 north, of range 14 west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Andrew Svenson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

16.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Aaron Peterson of the northwest quarter of section five (5), in township forty-eight (48) north, of range thirteen (13) west of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Aaron Peterson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed

599 the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

17.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Israel Johnson, of the northeast quarter of section five (5), in township forty-eight (48) north, of range thirteen (13) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate

and patent issued to said Israel Johnson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

18.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Ole Westerland of the northeast quarter of section four (4), in township forty-eight (48) north, of range thirteen (13) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Ole Westerland for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

19.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Martin Larson of the northeast quarter of section six (6), in township forty-eight
600 (48) north, of range thirteen (13) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Martin Larson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

20.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Andrew Wallmark of the northwest quarter of section four (4), in township forty-eight (48) north, of range thirteen (13) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Andrew Wallmark for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

21.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Otto Wallmark of lots seven, eight, and nine (7, 8, & 9) and the northwest quarter of the northeast quarter of section one (1), in township forty-eight (48) north, of range fourteen (14) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Otto Wallmark for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error in paragraphs a to g, inclusive.

601

22.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Gustav Johnson of lots one, two, and three (1, 2, & 3) in section one (1), in township forty-eight (48) north, of range fourteen (14) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said Gustav Johnson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson, and as detailed in the foregoing eleventh assignment of error, in paragraphs a to g inclusive.

23.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by John Johnson (described in complaint as second John Johnson) of the northwest quarter of section one (1), in township forty-eight (48) north, of range fourteen (14) west, of the fourth principal meridian, in Douglas County, State of Wisconsin, and also the patent certificate and patent issued to said second John Johnson for said last-described parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson, and as detailed in the foregoing eleventh assignment of error, in paragraphs a to g inclusive.

24.

In not making, rendering, and entering a decree in favor of complainants, adjudging void and cancelling the preemption entry by Sven Magnuson of the northwest quarter of section two (2), in township forty-eight

(48) north, of range fourteen (14) west, of the fourth principal meridian, in Douglass County, State of Wisconsin, and also the patent certificate and patent issued to said Sven Magnuson for said last-described
602 parcel, and the several conveyances thereof referred to in the bill of complaint, because of the fraudulent acts and circumstances charged in the complaint and clearly established by the evidence, which showed the facts relating thereto to be substantially the same as in the case of the parcel entered by the first John Johnson and as detailed in the foregoing eleventh assignment of error, in paragraphs a to g inclusive.

25.

The said circuit court erred in taking into consideration the evidence specifically objected to by complainants upon the trial, and particularly the following, to wit: The interrogatories propounded to the witness, Lorenz Johnson, regarding a certain deposition given by him in the action of Gagnalls vs. Stinson, and his answers to the same, which interrogatories and answers are found on pages 69, 70, and 71 of the printed record; the testimony of George N. Hillman relative to the deposition of said Lorenz Johnson, found on pages 195 to 197, inclusive, of the printed record; the testimony of James Bardon relative to the value of the lands in controversy, found on pages 234 to 236, inclusive, of the printed record; the testimony of Michael S. Bright relative to the amount of taxes paid and unpaid on said lands, found on pages 237 to 240, inclusive, of the printed record; the cross-examination of witness, John Shaleen, as to the character and standing of Otto Wallmark, found on page 261 of the printed record; the cross-examination of the witness, Urguelle Gouge, as to the character of the soil in the vicinity of Superior, and with reference to preemption claims and improvements on public lands other than those in controversy, found on pages 276, 277, 278, 281, and 282 of the printed record; the letter of Hiram Hayes to the Commissioner of the General Land Office, dated January 24, 1856, found at page 207 of the printed record; the letter of Thomas A. Hendricks to Hiram Hayes, dated May 22, 1856, and found at pages 287–8 of the printed record; the notices of contest published in the Superior Chronicle, and found at pages 288 and 289 of the printed record; the declaration of trust by James Stinson; wills of Thomas, Henry A., and John Stinson; record of partition in chancery and subsequent conveyances between heirs of Thomas Stinson, deceased, an abstract of which is found at pages 298 and 299 of the printed record; and the evidence regarding certain tax sales and tax proceedings shown at pages 301 to 303, inclusive, of the printed record.

26.

The said decree of the circuit court is contrary to law.

603 27.

Said decree is not comformable to equity.

28.

Said decree is contrary to the evidence in the case, and is against the clear weight and preponderance of the evidence.

In order that the foregoing assignment of errors may be and appear of record, the complainants present the same to the court and pray that such disposition be made thereof as shall be in accordance with law and the statutes of the United States in such case made and provided, and complainants pray that said decree may be reversed and that said court may be directed to enter a decree in accordance with the prayer of the bill.

P. C. KNOX,
United States Attorney-General,
& JOHN B. SIMMONS,
Special Asst. U. S. Attorney,
Solicitors for Complainants.

May 22d, 1901.

(Enclosed:) Chan. 279 B. Circuit court of United States for western district of Wisconsin. United States of America, complainants, vs. James Stinson and Henry J. Stinson et al., defendants. Assignments of error on appeal. John B. Simmons, asst. attorney for complainants. Filed May 22, 1901. F. W. Oakley, clerk.

Afterwards, to wit, July 16, 1901, filed præcipe for record on appeal, as follows:

604 *Præcipe for transcript, filed July 16, 1901.*

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON ET AL., DEFENDANTS.

To F. W. Oakley, esq., clerk of United States courts, Madison, Wisconsin:

Upon the appeal of the above-named complainants, the United States of America to the United States circuit court of appeals for the seventh judicial circuit from the decree of the said circuit court of the United States for the western district of Wisconsin, entered in the above-entitled action on the 30th day of November, 1900, you will please include in the record to be transmitted to said United States circuit court of appeals complete copies of all the pleadings, depositions, and documentary evidence and other papers and files shown and either included in full or abstracted in the printed record prepared for use and used upon the hearing of said cause before the Hon. Romanzo Bunn, judge of said circuit court, and a copy of which is herewith furnished you; also the copy of decree in said action, bearing date as aforesaid, November 30, 1900; also the copy of the exceptions filed by counsel for complainants to the decision of said circuit court, together with the

petition for appeal, order allowing appeal, and assignment of errors; also citation on appeal and return thereon, all of which are now on file in your office.

Dated Racine, Wis., July 15, 1901.

JOHN B. SIMMONS,
Special Assistant U. S. Attorney.

(Endorsed:) U. S. circuit court, western dist. of Wisconsin. United States of America, plaintiff, vs. James Stinson et al., defendants. Precipe. Filed Jul. 16, 1901. F. W. Oakley, clerk.

Afterwards to wit, July 27, 1901, filed order extending time for transmitting record for U. S. court of appeals, as follows to wit:

605 *Order of July 27, 1901, extending time for transmitting record.*

United States circuit court, western district of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON ET AL., DEFENDANTS.

It appearing to the court that the record in the above-entitled cause is voluminous and that it was impracticable to complete the transcript of the record therein upon the appeal of the above-named complainants to the United States circuit court of appeals by the return day of the citation on appeal, being the 22nd day of June, 1901, and, on motion of the solicitors for said complainants and appellants,

It is ordered that the time for making and transmitting the record in said cause for the said United States circuit court of appeals be, and the same is hereby enlarged and extended to and including the 1st day of September, A. D. 1901.

Dated Madison, Wis., July 27, A. D. 1901.

By the court:

R. BUNN, *Judge.*

(Endorsed:) 279 B. United States circuit court, western district of Wisconsin. United States of America, complainants, vs. James Stinson, et al., defendants. Order extending time for transmitting record for U. S. court of appeals. John B. Simmons, spl. asst. U. S. atty. Filed Jul. 27, 1901. F. W. Oakley, clerk.

Certificate of clerk.

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, clerk of the circuit court of the United States for said district, do hereby certify that I have compared the foregoing transcript of record with the original records of this court now remaining of record in my office in the case therein lately pending of United States of America, complainants, versus James Stinson, Henry J. Stinson, and Michael S. Bright as receiver of James Stinson, defendants, and

606 that the same is a correct transcript therefrom. I further certify that the citation therein, with admission of service thereon hereto

annexed is the original citation and admission of service granted in said cause.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city Madison, in the said western district of Wisconsin, this twenty-first day of August, in the year of our Lord one thousand nine hundred and one, and of the Independence of the said United States the one hundred and twenty-sixth.

[SEAL.] F. W. OAKLEY, *Clerk.*

On the same day, to wit, May 22, 1901, citation issued in within clause, as follows, to wit:

Citation, filed May 23, 1901.

CITATION ON APPEAL.

United States circuit court of appeals for the seventh circuit.

UNITED STATES OF AMERICA,
Seventh Judicial Circuit, ss:

The President of the United States to James Stinson, Henry J. Stinson, and Michael S. Bright as receiver of the said James Stinson, and to Spooner, Sanborn, Kerr, and Spooner, their attorneys, greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the seventh circuit, to be held at the city of Chicago, in the State of Illinois, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western district of Wisconsin, wherein the United States of America are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the
607 United States, this 22d day of May, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-fifth.

[SEAL.] R. BUNN, *Judge.*

Attest:
F. W. OAKLEY, *Clerk.*

Due service admitted this 22d day of May, A. D. 1901.

JOHN C. SPOONER,
A. L. SANBORN,
R. M. BASHFORD,
Solrs. for Defendants & Appellees.

A. L. SANBORN,
Sols. for M. S. Bright, Receiver.

Due service of within citation admitted as to all of the defendants and as to solicitors and attorneys for defendants this 22d day of May, A. D. 1901.

SPOONER, SANBORN, KERR & SPOONER.

Filed May 23, 1901.

608 United States circuit court of appeals for the seventh circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 607, inclusive, contain a true and complete copy of the printed record filed in this court on December 18, 1901, which was prepared for the printer, indexed, supervised, and distributed by me in accordance with the rules of this court, and upon which the cause was determined by the United States circuit court of appeals for the seventh circuit, and which has been compared by me with the original transcript of record on file in this office, in the case of United States of America *vs.* James Stinson and Henry G. Stinson, and Michael S. Bright, as receiver of James Stinson, No. 829, October term, 1900, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this sixth day of August, A. D. 1904.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

608a Supreme Court of the United States, October term, 1904.

UNITED STATES, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright as receiver of James Stinson, appellees. } No. 153.

STIPULATION.

It being found that from the original transcript of the record on file herein certain portions were by accident omitted,

It is hereby stipulated by and between counsel for the parties to the above-entitled cause that the printed record used at the hearing in the circuit court of appeals, hereto attached and certified by the clerk of the circuit court of appeals to be a true and complete copy of said record, shall be substituted for the similar printed copy in the original record now on file in the Supreme Court of the United States, with the same force and effect as if the same had been originally certified to the Supreme Court of the United States by the clerk of the circuit court of appeals, and that in the printing of the transcript of the record for the use of the Supreme Court of the United States the clerk thereof shall use said substitute record in lieu of that now on file.

Dated August 8, A. D. 1904.

HENRY M. HOYT,
Solicitor-General.
JOHN C. SPOONER,
A. L. SANBORN,
ROBERT M. BASHFORD,
Counsel for Appellees.

608b (Indorsed:) File No. 19150. Supreme Court U. S., October term, 1904. Term No. 153. The United States, appellant, *vs.* James Stinson et al. Stipulation to correct record. Filed Aug. 12, 1904.

609 At a regular term of the United States circuit court of appeals for the seventh circuit begun and held at the United States court rooms, in the city of Chicago, in said seventh circuit, on the second day of October, 1900, of the October term, in the year of our Lord one thousand nine hundred, and of our Independence the one hundred and twenty-fifth.

And afterwards, to wit, on the third day of September, 1901, in the October term last aforesaid, came the appellees, by their counsel, Mr. R. M. Bashford, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1900.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright as receiver of James Stinson, appellees. } No. 829.

The clerk will enter my appearance as counsel for the appellees.

R. M. BASHFORD.

(Endorsed:) Filed Sep. 3, 1901. Edward M. Holloway, clerk.

610 And afterwards, on the same day, to wit, on the third day of September, 1901, in the October term last aforesaid, came the appellees, by their counsel, Mr. A. L. Sanborn, Mr. John C. Spooner, and Mr. Robert M. Bashford, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1900.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright as receiver of James Stinson, appellees. } No. 829.

The clerk will enter my appearance as counsel for the appellees.

A. L. SANBORN.

JOHN C. SPOONER,
ROBERT M. BASHFORD,
Of counsel.

(Endorsed:) Filed Sep. 3, 1901. Edward M. Holloway, clerk.

And afterwards, to wit, on the sixth day of September, 1901, in the October term last aforesaid, came the appellant, by its counsel, Mr.

William G. Wheeler and Mr. Mr. Henry T. Sheldon, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures as follows, to wit:

611 United States circuit court of appeals for the seventh circuit, October term, 1900.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright, as receiver of James Stinson, appellees. } No. 829.

The clerk will enter my appearance as counsel for the appellant.

WILLIAM G. WHEELER.
HENRY T. SHELDON.

(Endorsed:) Filed Sep. 6, 1901. Edward M. Holloway, clerk.

And afterwards, to wit, on the twentieth day of September, 1901, in the October term last aforesaid, came the appellant by its counsel, Mr. John B. Simmons, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1900.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright, as receiver of James Stinson, appellees. } No. 829

The clerk will enter my appearance as counsel for the appellant.

JOHN B. SIMMONS.

(Endorsed:) Filed Sep. 20, 1901. Edward M. Holloway, clerk.

612 And afterwards, to wit, on the twenty-fourth day of September, 1901, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain stipulation, which stipulation is in the words and figures following, to wit:

United States circuit court of appeals, seventh circuit.

UNITED STATES OF AMERICA, APPELLANTS,
vs.
JAMES STINSON ET AL., RESPONDENTS.

It is hereby stipulated by and between the parties to the above-entitled action by their respective attorneys, that the printed record prepared for use in said action in the United States circuit court for the western district of Wisconsin, and there used upon the trial of said action, may be used in the hearing and argument of said cause on appeal in the said United States circuit court of appeals in so far as the same embraces the record transmitted on said appeal, and that the documentary evidence, of which an abstract only is set forth in said printed record, need not be printed

in full in the rec'rd printed for the use of said circuit court of appeals, but that the abstract of such documentary evidence as set forth in said printed record in the court below may be retained and used in the printed record on appeal with the same effect as if said documentary evidence were printed in full in said record.

613 Further stipulated that in preparing the printed record in said above-entitled cause for use in the said circuit court of appeals, only such additional printing need be done as may be necessary in connection with the matter contained in said printed record in the court below to make said printed record on appeal full and complete, as required by the rules of said circuit court of appeals.

Also stipulated further that such order may be entered by the circuit court of appeals as may be necessary to authorize the use of the printed record below in the manner herein stipulated.

Dated September 21, A. D. 1901.

JOHN B. SIMMONS,
Special Assistant United States Attorney and Solicitor for Appellants.

JOHN C. SPOONER,
A. L. SANBORN,
Solicitors for Respondents.

Ordered accordingly:
JAS. G. JENKINS.

25 copies of record shipped by American Express to Mr. Holloway Sept. 23, 1901.

(Endorsed:) Filed Sep. 24, 1901. Edward M. Holloway, clerk.

And afterwards, to wit, on the twenty-sixth day of September, 1901, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *September 26, 1901.*

Before Hon. James G. Jenkins, presiding judge.

614 Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA,
vs.
JAMES STINSON ET AL. } 829.

Upon filing of stipulation of counsel, it is ordered that the printed record prepared for use in *in* said action in the United States circuit court for the western district of Wisconsin, and there used upon the trial of said action, may be used in the hearing and argument of said cause on appeal in the said United States circuit court of appeals in so far as the same embraces the record transmitted on said appeal, and that the documentary evidence, of which an abstract is only set forth in said printed record, need not be printed in full in the record printed for the use of said circuit court of appeals, but that the abstract of such documentary evidence as set forth in said printed record in the court below may be retained and used in the printed record on appeal with the same effect as if said documentary evidence were printed in full in said record.

And it is further ordered that in preparing the printed record in said above-entitled cause for use in said circuit court of appeals, only such additional printing need be done as may be necessary in connection with the matter contained in said printed record in the court below to make said printed record on appeal full and complete, as requested by the rules of said circuit court of appeals.

615 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court rooms, in the city of Chicago in said seventh circuit, on the first day of October, 1901, of the October term, in the year of our Lord one thousand nine hundred and one and of our Independence the one hundred and twenty-sixth.

And afterwards, to wit, on the seventh day of October, 1901, in the October term last aforesaid, came one of the appellees, Michael S. Bright, receiver, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1900.

UNITED STATES OF AMERICA
vs.
JAMES STINSON, MICHAEL S. BRIGHT, RECEIVER, ET AL. } No. 829.

The clerk will enter my appearance as counsel for the appellee, Bright, receiver.

MICHAEL S. BRIGHT.

(Endorsed:) Filed Oct. 7, 1901. Edward M. Holloway, clerk.

And afterwards, to wit, on the second day of January, 1902, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel in the above-entitled cause, which stipulation is in the words and figures following, to wit:

616 United States circuit court of appeals, seventh circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON ET AL., APPELLEES.

It is stipulated that the appeal herein may be heard before said court, may, with the consent of the court, be heard on the 26th day of February, 1902, at the opening of court on said day, or as soon thereafter as counsel can be heard.

JOHN B. SIMMONS and
M. C. BURCH,
Solicitors for Appellants.
JOHN C. SPOONER,
R. M. BASHFORD, and
A. L. SANBORN,
Solicitors for Appellees.

And afterwards, to wit, on the first day of February, 1902, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

SATURDAY, *February 1, 1902.*

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Romanzo Bunn, district judge; Hon. William H. Seaman, district judge.

617 Before Hon. James G. Jenkins, circuit judge; Hon. Peter S. Grosscup, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON ET AL. } 829.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing February 26, 1902.

And afterwards, to wit, on the fifteenth day of February, 1902, in the October term last aforesaid, there was filed in the office of the clerk of this court a supplemental return from the clerk of the circuit court of the United States for the western district of Wisconsin, which supplemental return is in the words and figures following, to wit:

618 OFFICE OF THE SECRETARY, MINNESOTA TERRITORY,
Saint Paul, June 25th, 1856.

I, J. Travis Rosser, secretary of said Territory, hereby certify, that Levi W. Folsom, a notary public, before whom the acknowledgment of the annexed instrument in writing was taken, was, at the time of taking thereof, and now is, a notary public in and for Minnesota Territory, legally commissioned sworn into office, and fully authorized to take depositions, acknowledgments of deeds, and do other official acts, and to all such acts full faith and credit are due and ought to be given, and that the signature of said Levi W. Folsom is genuine.

In testimony whereof I have hereunto set my hand and affixed the great seal of the said Territory, this 25th day of June, in the year of our Lord one thousand eight hundred and fifty-six and of the Independence of the United States of America the seventy-ninth.

[L. S.] J. TRAVIS ROSSER,
Secy. of M. T.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JAMES STINSON ET AL., DEFENDANTS.

This indenture, made the twentieth day of June, in the year of our Lord one thousand eight hundred and fifty-six, between Peter Norrell and Bretta Andersdatter, his wife, of the county of Douglas, in the State

of Wisconsin, of the first part, and James Stinson, of the county of Ramsey and Territory of Minnesota, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of fifteen dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, convey and confirm, unto the said party of the second part, his heirs and assigns, forever, all the following described price or parcel of land, situate, lying, and being in the county of Douglas and State of Wisconsin, and known and designated as follows, viz: The southwest quarter of section thirty-five (35) in township forty-nine (49), range fourteen (14).

619 To have and to hold the same, together with all and singular the *the* appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity in and to the above described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In testimonny whereof the said party of the first part ha hereunto set hand and seal the day and year first above written.

his
PETER X NORRELL. [SEAL.]
mark
BRETTA ANDERSDATTER. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. R. COCHRAN.
OTTO WALLMARTH.

TERRITORY OF MINNESOTA,
County of Chisago, ss:

Be it known that on the twentieth day of June, A. D. 1856, before the undersigned personally came Peter Norrell and Bretta Andersdatter, to me known to be the persons described in and who executed the within deed and acknowledged that he executed the said deed freely and voluntarily for the uses and purposes therein expressed. And the said Bretta Andersdatter on a private examination by me separate and apart from her said husband acknowledged that she executed the said deed freely and voluntarily without fear or compulsion from anyone.

[L. S.] LEVI W. FOLSOM,
Notary Public.

(Endorsed:) Exhibit A–4. W. O. H. 113. Peter Norrell & wife to James Stinson. Quitclaim deed. Register's office, Douglas Co., Wis. Filed for record on the 7″ day of July, A. D. 1856, at 7 o'clock a. m., and recorded in liber "B" of deeds, on pages 380, 381. Frederick I. Whitaker, register of deeds. Fees, $1.25.

620 United States circuit court for the western district of Wisconsin.

Pursuant to the order herein allowing the appeal of the above-named complainants to the United States circuit court of appeals for the seventh circuit, and to the precipe on such appeal, to me directed and delivered

by the solicitors for said appellant, and by way of supplemental return on said appeal, I, F. W. Oakley, clerk of the circuit court of the United States for the western district of Wisconsin, herewith transmit a true copy of a certain deed and exhibit, being deed from Peter Norell and wife to James Stinson, bearing date June 20th, A. D. 1856, and marked "Ex. A.–4—W. O. H.," which deed and exhibit were offered in evidence and form a part of the record in this case of United States vs. James Stinson et al., lately pending in the circuit court of the United States for the western district of Wisconsin, under my hand and the seal of said court.

And I do hereby certify that at the time the original return on the appeal in said cause was made by me to the said United States circuit court of appeals for the seventh circuit, said deed and exhibit marked "Ex. A.–4—W. O. H.," had been temporarily withdrawn from the files of this court and was in the possession of the solicitors for the defendants in said cause, but its absence from the files was not observed at the time and it was accordingly, by mistake and oversight, omitted from said original return, and the same is herewith transmitted, by way of supplemental return, for the purpose of supplying such omission.

Witness my official signature and the seal of said circuit court at the city of Madison, in said district, this 14th day of February, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred and twenty-sixth.

[SEAL.]

F. W. OAKLEY,
Clerk of the Circuit Court of the United States for the Western District of Wisconsin.

621 And afterwards, to wit: On the twenty-fifth day of February, 1902, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain stipulation of counsel in the above-entitled cause, which stipulation is in the words and figures following, to wit:

United States circuit court of appeals, seventh circuit.

THE UNITED STATES OF AMERICA
vs.
JAMES STINSON ET AL.

It is hereby stipulated and agreed that this cause, with the permission of the court, may be continued until the October term, 1902.

Dated February 20, 1902.

JOHN B. SIMMONS and
M. C. BURCH,
Solicitors for Appellant.
JOHN C. SPOONER,
R. M. BASHFORD,
A. L. SANBORN,
Solicitors for Appellees.

(Endorsed:) Filed Feb. 25, 1902. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit: On the twenty-fifth day of February, 1902, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

622 TUESDAY, *February 25, 1902.*

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs. } 829.
JAMES STINSON ET AL.

Upon filing of stipulation of counsel it is ordered that this cause be, and the same is hereby, continued to the October term, 1902.

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court rooms in the city of Chicago in said seventh circuit on the seventh day of October, 1902, in the year of our Lord one thousand nine hundred and two, and of our Independence the one hundred and twenty-seventh.

And afterwards, to wit: On the seventh day of October, 1902, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

623 TUESDAY, *October 7, 1902.*

Court met pursuant to adjourment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA,
vs. } 829.
JAMES STINSON, ET AL.

It is ordered by the court that Mr. William E. Church be allowed to enter his appearance and file a brief in the above-entitled cause.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs. } 829.
JAMES STINSON, ET AL.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing November 14, 1902.

And afterwards, to wit: On the twenty-ninth day of October, 1902, in the October term last aforesaid, came the appellant, by its counsel, Mr. M. C. Burch, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to wit:

624 United States circuit court of appeals for the seventh circuit, October term, 1902.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON ET AL. } No. 829.

The clerk will enter my appearance as counsel for the appellant.

M. C. BURCH.

(Endorsed:) Filed Oct. 29, 1902. Edward M. Holloway, clerk.

And afterwards, to wit: On the eighth day of November, 1902, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain stipulation of counsel in the above-entitled cause, which stipulation was in the words and figures following, to wit:

In the United States circuit court of appeals for the seventh circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright, as receiver of James Stinson, appellees. } No. 829.

It is hereby stipulated that this cause, with the consent of the court, may be continued to the May session, 1903.

Dated November 6, 1902.

WILLIAM G. WHEELER,
HENRY S. SHELDON,
JOHN B. SIMMONS, &
M. C. BURCH,
Solicitors for Appellant.

JOHN C. SPOONER,
R. M. BASHFORD,
A. L. SANBORN,
Solicitors for Appellees.

(Endorsed:) Filed Nov. 8, 1902. Edward M. Holloway, clerk.

625 And afterwards, on the same day, to wit, on the eighth day of November, 1902, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

SATURDAY, *November 8, 1902.*

Court met pursuant to adjournment.

Present, Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs.
JAMES STINSON ET AL. } 829.

Upon filing of stipulation of counsel, it is ordered that this cause be, and the same is hereby, continued to the May session of the October term, 1902.

And afterwards, to wit, on the fourteenth day of April, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *April 14, 1902.*

Court met pursuant to adjournment.

Present, Hon. James G. Jenkins, circuit judge, presiding; Hon Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

626 Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs.
JAMES STINSON, HENRY S. STINSON, AND MICHAEL S. Bright, as receiver, etc. } 829.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing May 15, 1903.

And afterwards, to wit, on the fifteenth day of May, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

FRIDAY, *May 15, 1903.*

Court met pursuant to adjournment.

Present, Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs.
JAMES STINSON ET AL. } 829.

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. John B. Simmons and Mr. M. C. Burch, counsel for appellant, and by Mr. A. L. Sanborn, Mr. Robert McMurdy, and Mr. R. M. Bashford, counsel for appellees, and the court having heard the same takes this matter under advisement.

627 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court rooms, in the city of Chicago, in said seventh circuit, on the sixth day of October, 1903, in the year of our Lord one thousand nine hundred and three, and of our Independence the one hundred and twenty-eighth.

And afterwards, to wit, on the sixth day of October, 1903, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above-entitled cause, which opinion is in the words and figures following, to wit:

628 In the United States circuit court of appeals for the seventh circuit. No. 829. October term, A. D. 1902. April session, A. D. 1903.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA, APPELLANT,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. BRIGHT, as receiver of James Stinson.

Before Jenkins, Grosscup, and Baker, circuit judges.

The facts are stated in the opinion of the court.

Grosscup, circuit judge, delivered the opinion of the court.

The suit in the circuit court was to set aside patents upon fourteen quarter sections of land in Douglas County, State of Wisconsin, issued by the United States severally to fourteen grantees at different times from December 15th, 1855, to March 25th, 1865. The patents were issued in pursuance of preemption by the several patentees, the dates of settlement named in the affidavits running from August 17th, 1854, to June 11th, 1855, and the dates of proving up running from October 24th, 1854, to June 22nd, 1855. Each of the quarter sections, on or about the date when proven up by the preemptor, was conveyed to appellee, James Stinson; who, following such conveyance, entered into possession and has continued in possession until February 19th, 1900, when receivers were appointed at the instance of his creditors. In the receivership proceedings debts amounting to upwards of five hundred and eighty thousand dollars have been proven against Stinson, about two hundred and fifty thousand dollars of which are the claims of depositors of a bank operated by Stinson. The lands in suit constitute the main part of the assests available for the payment of these debts—debts
629 presumably incurred, to some extent at least, upon the credit that the apparent ownership of these lands gave to Stinson.

The contention of the Government is that the lands were not preempted in accordance either with the letter or spirit of the preemption law; that there was no actual settlement in person by the preemptor that no dwellings, within the meaning of the preemption law, were erected; that the pretended preemptions were, in substance, the carrying out only of an arrangement with Stinson whereby Stinson, under the forms of preemption, obtained title to lands that in no other way could have been purchased by him from the Government; in short, that the

pretended preemptions were in bad faith, intended at the time, not for the settlement and use of the preemptors, but as a part of Stinson's scheme in land speculation.

Testimony was submitted tending to show the truth of these averments. What conclusion would have been reached had this suit been commenced and the evidence submitted within such a period after the preemptions as would have enabled the court to have obtained an adequate knowledge of all the facts, it is not necessary, in the view we take of this case, to state.

The suit was not begun until February, 1895, a period of nearly forty years after the preemptors entered the lands and the Government issued its patents. Meantime the land—owing to the fact that the city of Superior, within whose corporate limits the lands are located, has grown with unusual rapidity—have sprung into unusual value. Meantime, also, Stinson has paid taxes amounting to more than seventy-two thousand dollars, and there are now unpaid taxes, presumably colorable liens in favor of the State and its several municipalities, amounting to nearly as much more. Besides, creditors have come into the transaction—creditors whose only knowledge respecting the lands was that Stinson held the title by patent, and had for forty years been in its undisputed possession and enjoyment. These facts alone would make it incumbent upon the Government to present a convincing case—a case that left no considerable doubt that a fraud had been practiced, as alleged. But other facts are added.

At least six and perhaps seven of the original preemptors have died. Of the seven living, the testimony of three, for some reason, has not been taken. Of the four others two have been examined upon the part of the Government and two upon the part of the defense. Thus out of fourteen parties, other than Stinson, to the original transaction, only four have been heard.

630 The testimony reveals that at least three of these four were originally, and are now, ignorant men, unable readily to understand the questions put to them or to convey their own answers. Of these four one was, when called as a witness, seventy-seven years old, another seventy-four, and another sixty-five. They speak from a memory displaying uncertainty at every point—a memory on which lapse of time and advanced years have contributed to lay infirmity. Nor has Stinson himself escaped these consequences. At the age of seventy-seven he is called upon to ransack his memory for events that happened when he was yet young.

At common law there was no bar by limitation to the bringing of actions. But this, in time, led to such instances of great injustice, where witnesses to the transaction had died or papers had been mislaid or destroyed, that to prevent them and render more certain the tenure of property, statutes of limitation were enacted. Though founded on substantial considerations, the effect of such statutes is to fix, more or less arbitrarily, a time beyond which an action shall not be brought. To the extent that the barrier thus set up fails to adjust itself to the equities of each case the limitations are artificial.

Laches is the name given in courts of equity to such delay as under all the circumstances of a transaction make the claim sued upon a stale one. Though founded partially upon the same considerations that underlie the

statutes of limitations, it is, in its practical application, intended as a spur to speedy inquiry. The doctrine of laches is less artificial, in that it adjusts itself more readily to the circumstances of each case. But, in an important sense, it remains artificial; for one of its chief objects—an object not wholly growing out of the effect of the lapse of time upon the availability of evidence—is to bring causes of dispute to an early adjustment, not because of consideration alone of loss of evidence, but because it is to the interest of society and property that known disputes shall be quickly settled.

These barriers, to the extent that they are thus artificial, can not be set up against the Government. It has not hitherto been supposed—at least no legislative action has been taken on such supposition—that Government needed the spur intended, as between individuals, to bring controversies to a speedy close, or that Government would press claims that ought not, by the obliteration of adequate sources of evidence through lapse of time, to be pressed. But when the Government seeks its rights at the hands of a court, equity requires that the rights of others as well should be protected. (Carr vs. United States, 98 U. S., 438.)

631 The Government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable inquiry. The substantial considerations underlying the doctrine of estoppel apply to Government as well as to individuals. (Chope vs. Detroit Plank Road Company, 37 Mich., 195; Commonwealth vs. Andre, 3rd Pick., 224.)

A decree such as is invoked in the case under consideration should never be entered unless all the facts entering into the preemption transactions have been gathered with the nicest kind of accuracy. In a case necessarily turning largely upon questions of motive and intention, no data is adequate unless reasonably complete. Courts are disinclined to set aside upon proof resting wholly in memory solemn deeds that have not been questioned for such a lapse of years, especially when the parties are dead. (Mayor of Hull vs. Horner, Cowper Rep., 110; United States vs. Flint, 4 Sawyer, 58; United States vs. Arredondo, 6 Peters, 746; Opinion of Attorney-General Black, 9 Opinions Attorney-General, 204.)

In the very nature of this case the data brought to our attention is and must remain incomplete. True it is that Stinson is still alive. But the fact of physical death in the cases noted is not a distinction that is controlling. Memory obliterated, or nearly obliterated, is, for the purposes of helpful testimony, as much gone as the memory of one physically dead. The controlling fact is that the court has no longer a reliable source from which to obtain facts upon which to found a decree. In the very nature of this cause no adequate data can be obtained. Whatever impression the evidence actually submitted may have left, the fact remains—a fact that determines the equities of this suit—that the transactions under review are so remote, and the sources of testimony so depleted by death and time, that there is no longer opportunity to put, with reasonable certainty, one's finger upon the truth. A case thus sapped of any possible satisfactory results from inquiry should not be entertained at all, except for reasons much more cogent than any here disclosed.

The decree of the circuit court will be affirmed.

632 And afterwards, on the same day, to wit, on the sixth day of October, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *October 6, 1903.*

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA,
vs.
JAMES STINSON, HENRY J. STINSON, AND MICHAEL S. Bright as receiver of James Stinson. } 829.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Wisconsin and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

And afterwards, to wit, on the twenty-fourth day of October, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

633 SATURDAY, *October 24, 1903.*

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA,
vs.
JAMES STINSON ET AL. } 829.

Upon application of Mr. John B. Simmons, counsel for appellant, it is ordered that the mandate in this cause be, and the same is hereby, stayed until further order of court.

And afterwards, on the same day, to wit, on the twenty-fourth day of October, 1903, in the October term last aforesaid, came the appellant by its counsel, Mr. M. C. Burch and Mr. John B. Simmons, and filed in the office of the clerk of this court a petition for appeal and assignment

of errors, which petition for appeal and assignment of errors are in the words and figures following, to wit:

United States circuit for the seventh circuit.

UNITED STATES OF AMERICA, COMPLAINANTS and appellants. *vs.* JAMES STINSON, ET AL., DEFENDANTS AND appellees.	In equity.

634 The above-named complainants and appellants, the United States of America, conceiving themselves aggrieved by the decree entered on the 6th day of October, A. D. 1903, in the above-entitled cause, affirming the decree of the United States circuit court for the western district of Wisconsin, from which the appeal herein was taken, do hereby appeal from said decree of the United States circuit court of appeals to the Supreme Court of the United States and pray that their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Chicago, Illinois, October 22nd, A. D. 1903.

M. C. BURCH &
JOHN B. SIMMONS,
Solicitors for Complainants and Appellants.

And now, to wit, on October 24, A. D. 1903, it is ordered that the above appeal be allowed as prayed for.

By the court:

JAS. G. JENKINS, *Presiding Judge.*

The United States circuit court for the seventh *circuit.*

UNITED STATES OF AMERICA, COMPLAINANTS and appellants, *vs.* JAMES STINSON, ET AL., DEFENDANTS AND appellees.	In equity.

635 *Assignment of errors on appeal.*

Come now the above-named complainants and appellants, the United States of America, and file the following assignment of errors upon which they will rely upon their appeal from the decree made by this honorable court on the 6th day of October, A. D. 1903, in the above-entitled cause.

The United States circuit court of appeals for the seventh circuit, which entered said decree affirming the decree of the United States circuit court for the western district of Wisconsin, dismissing complaints' bill in said cause, committed manifest error in this, to wit:

1. In holding and deciding that the evidence in said cause was inconclusive and insufficient to prove that the defendant, James Stinson, did,

as charged in the bill of complaint herein, with intent to cheat and defraud complainants out of their title to the lands therein described, employ, hire, or procure the persons mentioned in the bill of complaint to fraudulently or otherwise preempt, enter, or obtain patents from the United States for the lands described in said bill, or any of them.

2. In holding and deciding that the evidence offered was inconclusive and insufficient to prove that said defendant, James Stinson, did, as charged in said bill of complaint, pay all or any part of the moneys required to be paid upon the entry of said lands described in the bill, or any part thereof, and the expenses connected with the making and proving up of said entries, or that he committed or was a party or privy to any of the frauds charged in said bill in connection with the entry of said lands in question, or any of them.

636 3. In holding and deciding that the evidence offered was inconclusive and insufficient to prove that said lands in question, or any of them, were not preempted and entered by the preemptors named in said bill for their own use and benefit, but were so preempted and entered for the benefit of said James Stinson, or by the procurement, hiring, or employment of the said James Stinson, or under an agreement, express or implied, to convey the same to said James Stinson.

4. In holding and deciding that the evidence on the part of the complainants, by which it was and is sought to set aside the patents in question, is not clear, unequivocal, and convincing, as required in such cases, but is doubtful, unreliable, and uncertain in character.

5. In holding and deciding that the evidence offered is inconclusive and insufficient to prove the fact to be, as charged in said bill of complaint, that the improvements alleged to have been made by the preemptors upon the lands in question, or any of them, were merely nominal, formal, and unsubstantial, and were not made in good faith, but perfunctorily and as a mere semblance of compliance with the requirements of the preemption laws.

6. In holding and deciding that the United States of America were barred of the relief sought in their said bill of complaint, by reason of laches and because the lapse of time rendered the evidence on the part of complainants uncertain, unreliable, and insufficient to establish fraud, as alleged; and because said defendant, James Stinson, had paid large sums of money in taxes upon the lands alleged to have been fraudulently entered by or for him prior to the discovery of the fraud, and

637 because the right of third parties, to wit, creditors of the said James Stinson, have arisen or accrued in the meantime.

7. In holding and deciding that the decree of said circuit court dismissing complainants' said bill for want of equity is right and just and in affirming the same.

8. In that the said circuit court of appeals did not enter a decree reversing the decree of the said circuit court for the western district of Wisconsin, as to the fourteen quarter sections of land described in said bill of complaint, or as to some part of them, and adjudging that the same were entered and patented fraudulently and through and by means of a fraudulent scheme and false and fraudulent devices, representations, affidavits, and proofs, and without settlement upon or improvement of the same, as set forth in said bill of complaint, and further adjudging

void and cancelling said entries, patents, and all subsequent conveyances of said lands, in accordance with the prayer of said bill.

9. In that the said United States circuit court of appeals did not make and enter a decree reversing the decree of said circuit court for the western district of Wisconsin, in respect particularly to the lands entered in the year 1854, and described in said bill of complaint, and adjudging void and cancelling the entries, patents, and subsequent conveyances of each separate quarter section thereof, on the ground that the title thereto was obtained from the United States fraudulently and by means of a fraudulent scheme and the false and fraudulent devices, representations, affidavits, and proofs set out in said bill of complaint, and without residence upon or improvement of the same, as required by the pre-
emption laws.

638 10. In that the said United States circuit court of appeals did not enter a decree herein reversing the decree of said United States circuit court for the western district of Wisconsin, in respect particularly to the entries made by Lorenz Johnson, Peter Norell, Andrew Svenson, and John Johnson, second (otherwise called John Lonquist), and adjudging void and cancelling the entries, patents, and subsequent conveyances of the lands entered by them, respectively, and each separate quarter section thereof, on the ground that the title to the same was obtained fraudulently and through and by means of the fraudulent scheme and false and fraudulent devices, affidavits, and proofs set out in said bill of complaint, and without residence upon or improvement of the same, as required by the preemption laws, and further, because said preemptors were, and each of them was, at and prior to the time of the alleged entry of said lands, a resident of the State of Minnesota, having families residing, and who continued to reside, in said State of Minnesota from said time until long after said lands were conveyed to said James Stinson.

11. In that said United States circuit court of appeals did not enter a decree reversing the decree of said United States circuit court for the western district of Wisconsin in respect particularly to the lands entered by Aaron Peterson, Martin Larsen, Sven Magnuson, and John Johnson, second (or Londquist), and described in said bill of complaint on the grounds already stated and on the ground and for the reason further that said preemptors and each of them, after making a pretended settlement upon said lands, abandoned the same and returned to their homes

639 in the State of Minnesota and there remained and resided for nearly a year before proving up and obtaining preemption certificates for said lands, and were so residing in said State of Minnesota at the time of so proving up and obtaining such certificates, and thereafter continued to reside in said State, and never resided in the State of Wisconsin.

12. The said decree of the United States circuit court of appeals is contrary to law and not conformable to equity.

13. The said decree is contrary to the evidence in the case, and is against the clear weight and preponderance of the evidence.

In order that the foregoing assignment of errors may be and appear of record, the complainants present the same to the court and pray that such disposition may be made thereof as shall be in accordance with law and the statutes of the United States in such case made and provided,

and complainants pray that said decree may be reversed and that a decree may be entered granting to complainants the relief prayed for in their said bill of complaint.

JOHN B. SIMMONS,
Special Assistant United States Attorney.
M. C. BURCH and
JOHN B. SIMMONS,
Solicitors for Complainants.

(Endorsed:) Filed Oct. 24, 1903. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-fourth day of October, 1903, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

640 SATURDAY, *October 24, 1903.*

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

Appeal from the circuit court of the United States for the western district of Wisconsin.

UNITED STATES OF AMERICA
vs.
JAMES STINSON ET AL. } 829.

Now, this day comes the appellant in this cause, by its counsel, Mr. John B. Simmons, and presents a petition for an appeal in this cause to the Supreme Court of the United States, and on consideration thereof it is now ordered that the said appeal be, and the same is hereby, allowed as prayed for.

641 United States circuit court of appeals for the seventh circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 640, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of United States of America *vs.* James Stinson and Henry J. Stinson and Michael S. Bright, as receiver of James Stinson, No. 829, October term, 1900, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this fourth day of November, A. D. 1903.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

642 UNITED STATES OF AMERICA, *ss:*

To James Stinson, Henry J. Stinson, and Michael S. Bright, as receiver of James Stinson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the seventh circuit, wherein the United States of America are appellants and you are appellees, to show cause, if any there be, why the judgment or decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of October, in the year of our Lord one thousand nine hundred and three.

JAS. G. JENKINS,
Presiding Judge United States Circuit Court of Appeals for the Seventh Circuit.

643 On this seventh day of November, in the year of our Lord one thousand nine hundred and three, personally appeared before me, the subscriber, Chas. Lewiston, United States marshal for the western district of Wisconsin, and makes oath that he delivered four true copies of the within citation to A. L. Sanborn, one of the solicitors, and counsel for the within-named James Stinson, Henry J. Stinson, and Michael S. Bright, as receiver of James Stinson; that service was admitted by said A. L. Sanborn, solicitor and counsel for the parties aforesaid, on the 6th day of November, A. D. 1903, at the city of Madison, Wis.; that he, the said A. L. Sanborn, as such solicitor, admitted service for the within-named Michael S. Bright, as receiver of James Stinson; also for John C. Spooner and R. M. Bashford, solicitors and counsel for the within-named appellees, for each of whom a certified copy of the within citation was furnished.

CHAS. LEWISTON.

Sworn to and subscribed the 7th day of November, A. D. 1903.

W. D. MCCUE,
U. S. Commissioner, Western District Wisconsin.

(Indorsed:) 331. Supreme Court of the United States. United States of America *vs.* James Stinson et al. Citation. Service of within citation made this 6th day of November, 1903. Michael S. Bright, receiver. John C. Spooner, R. M. Bashford, A. L. Sanborn, solicitors and counsel for appellees. Filed Nov. 10, 1903. Edward M. Holloway, clerk.

(Indorsement on cover:). File No. 19150. U. S. C. C. of appeals, 7th circuit. Term No. 153. The United States, appellant, vs. James Stinson & Henry J. Stinson, and Michael S. Bright, as receiver of James Stinson. Filed December 2nd, 1903. File No. 19150. Office of the clerk Supreme Court U. S. Received Nov. 27, 1903.

O

In the Supreme Court of the United States.

UNITED STATES OF AMERICA, APPELLANT,
v.
JAMES STINSON, HENRY J. STINSON, AND Michael S. Bright, as receiver of James Stinson, appellees.

ON APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

The Government regrets to present to the court a statement and argument running to such length; but dealing with a record of 500 pages, it has been necessary to set forth the testimony in order that the court may be accurately apprised of the facts. We have condensed as thoroughly as possible, and submit with respect, that the result is really after all a terse abstract from a voluminous record and a complicated argument, and is necessary to the accurate knowledge of the court.

This is an appeal from the decree of the circuit court of appeals for the seventh circuit affirming the decree of the circuit court for the western district of Wisconsin in a suit in equity brought by the United

States to set aside patents to fourteen quarter sections of land in Douglas County, Wis., now within the limits of the city of Superior, though practically unimproved. The lands were acquired from the United States by fraud, as alleged in the bill of complaint, by means of the preemption act, as they were not open to cash entry, and at the time, 1854 and 1855, the homestead act had not been passed.

THE COMPLAINT.

The complaint avers that the defendant, James Stinson, being at the time a British subject and therefore not entitled to enter any lands under the act, hired certain immigrant Swedes, who had been in the country but a short time and were entirely ignorant of the English language and our laws and customs, to preempt the lands for his benefit and convey them to him; that there were no actual bona fide settlements upon or improvement of the lands; that the preemption certificates and patents were obtained by false proofs of settlement and improvement, and false affidavits of preemptors showing that they made the entries in good faith for their own exclusive use and not to sell the same on speculation, or under any agreement, express or implied, that the title should inure to the benefit of another; that Stinson was an accessory to these false proofs, in fact, procured them to be made; that the land was taken with money furnished by him, the parties all being hired for that purpose; that the lands were immediately conveyed to him when the ceremony was completed and before the

patents were issued; that the fraud was not discovered by the General Government until 1885, when a special agent of the General Land Office made an investigation and ascertained and reported the fraud to his superior officers; that a suit in equity was brought very soon after such report, but was before the conclusion thereof dismissed because of a technical defect in the form of the bill; that a second action thereafter begun failed of prosecution through changes in the office of the local United States attorney, and that thereby the injunction then procured restraining the defendant, James Stinson, from transferring the lands in controversy, was vacated; that said Stinson thereafter hurriedly executed a conveyance of the property to his son, Henry J. Stinson, for the recited consideration of $1,500,000, taking back a mortgage to himself for $1,460,000; that this conveyance was made without consideration and that it and the said mortgage executed contemporaneously were to hinder, delay, and defraud complainants and to impede any action for the recovery of the lands.

The relief prayed was a decree vacating the patents as well as the subsequent fraudulent conveyances.

ANSWER OF JAMES STINSON.

James Stinson, answering separately, denied the employment of the men, or either of them, to preempt and patent the lands for him; denied any fraudulent purpose or any scheme to cheat the complainant of its title; admitted, as to each of the preemptors named, that they preempted the lands in question, but not

under employment, hire, direction, or control of himself; admitted that they presented proofs, papers, and affidavits to effect the entries; admitted, on information and belief, that such papers were received as sufficient by the officers of the local land office, but denied, on information and belief, that such papers were false or fraudulent; admitted that the parties conveyed the lands in question to himself; and, in substance and effect, denied in general and detail the allegations of the bill charging any false or fraudulent action upon his part. He then averred that his father, Thomas Stinson, of Hamilton, Canada, being in his lifetime possessed of considerable means and property, placed in defendant Stinson's hands, between 1850 and 1857, considerable sums of money, to be invested in real estate in Wisconsin and Minnesota; that defendant purchased many tracts in said State as the agent of his father, taking title in his own name for convenience in making sale and conveyance; that defendant placed considerable sums of money in that way with an agent at Hudson, Wis., the location of the local land office, and purchased lands from persons who had obtained title thereto from the United States and desired to dispose of the same; that among the lands so purchased were the fourteen quarter sections described in the bill; that he took them entirely for his father and as his trustee; that he never had any personal interest in them himself until 1855, when he purchased two of the quarter sections from his father; that in 1856 he signed a paper declaring

his holding of the title to said lands to be in trust for his father; that his father died at Hamilton, Ontario, March 13, 1864, testate, leaving three sons, including himself, and two daughters; that a suit was commenced in chancery in 1870 against defendant and other persons for the construction of his father's will and to distribute the estate and partition the real estate, and that the land was partitioned and declared to be part of his father's estate; that parts of the lands in question were allotted to different ones of the heirs; that one of his brothers died testate in 1877, and his will was probated; that three of the quarter sections were allotted to himself, and that he bought and paid for others of the lands and derived title to twelve quarter sections through these heirs of his father, James Stinson, and through direct purchase from his father during his lifetime; that the lands were sold for taxes in 1877, and that he procured tax deeds for them himself; that he has already paid taxes to the amount of $75,000 on the lands, and that the taxes for several years remained unpaid, amounting to $80,000, which he intended to pay up to the time when they were conveyed by deed to his son, Henry J. Stinson, by himself; that at the time of the entry of the tracts of land in question he was much interested as one of the original proprietors of Superior, and had charge, to a certain extent, of improvements made in opening and grading streets, etc., and employed John Johnson, one of the preemptors, to hire laborers to work on the streets in making improvements, and that among them were, as he

is informed, some of the parties who preempted the lands mentioned in the bill; that he is informed they went there and labored for a considerable time, and denied that he in any way employed them to enter public lands or assert preemption claims to the same; avers, on information and belief, that they did enter upon the lands and erected residences, complied with the law generally, and subsequently entered them at Hudson, Wis., and that after such entry, and not before, he purchased said lands; that said lands were only a portion of those lands obtained by him with his father's money and as his father's trustee. He further averred that this suit is not prosecuted for the benefit of the United States, but for certain private individuals, so that they can subsequently locate the lands with scrip by reason of a conspiracy entered into at St. Paul, Minn., between parties whom he names, and avers that these parties had entered upon the lands and were trying to obtain legal title to them; he also averred that in 1881, 1882, and 1889 he made sales of some portions of the lands to different parties, and in 1894 certain railroads condemned a strip across the lands for railroad purposes and now hold possession of the same, and that his codefendant, Henry J. Stinson, has conveyed to another railroad company 22 acres and to a private party 40 acres. He further denies any conspiracy to purchase or procure land. The answer sets up lapse of time as a bar to relief by complainant. It also sets up his conveyance to his son and the terms of the same. He denies that such conveyance was made to hinder,

delay, or defraud, and avers that a bill was filed by complainant in 1887 substantially the same as the bill herein, and an injunction procured; that the same was dismissed in 1894 for the want of prosecution; that but for said injunction the lands might have been sold at high prices, as it was a time of great prosperity. That at the time of the dismissal of the former suit, owing to great financial depression throughout the country and his need for money, he sold the lands in question to afford himself financial relief, believing that the United States would rest without further prosecution of the suit, and that such were the reasons for the conveyance to his son.

THE ANSWER OF HENRY J. STINSON.

The defendant, Henry J. Stinson, by the same solicitors, filed a separate answer denying all knowledge of the matters alleged against his father in the bill of complaint, averring a sale from his father and mother to himself of the premises in question for $1,500,000, admitting that he paid no money, but that $40,000 was the consideration for his services to his father in his business, and that for the remainder of the purchase money he gave notes secured by mortgages on the land for $1,460,000, and denied any knowledge of the matters stated in the bill at the time of the purchase, or any fraud upon the part of his father in procuring the land; averred his belief in his father's denial of the fraud or conspiracy in the entry of these lands; denied that the purchase was for the

purpose of hindering, delaying, or defrauding complainant, and set up the same statement about the progress of previous suits in practically the same manner as stated in his father's answer, and averred the same sales made by himself through outside parties as those stated in his father's answer.

REPLICATION.

A general replication to these answers was filed.

THE ACTION OF THE COURT.

The circuit court of the United States for the western district of Wisconsin, in which the suit was instituted, dismissed the bill upon the ground that the allegations thereof were not sufficiently sustained by the evidence and testimony.

The case was taken on appeal to the circuit court of appeals for the seventh circuit, which court affirmed the decree of the circuit court.

An appeal to this court was allowed, and the following assignment of errors was filed:

ASSIGNMENT OF ERRORS.

> Come now the above-named complainant and appellant, the United States of America, and files the following assignment of errors upon which they will rely upon their appeal from the decree made by this honorable court on the 6th day of October, A. D. 1903, in the above-entitled cause.
>
> The United States circuit court of appeals for the seventh circuit, which entered said decree affirming the decree of the United States circuit

court for the western district of Wisconsin dismissing complainant's bill in said cause, committed manifest error in this, to wit:

1. In holding and deciding that the evidence in said cause was inconclusive and insufficient to prove that the defendant, James Stinson, did, as charged in the bill of complaint herein, with intent to cheat and defraud complainants out of their title to the lands therein described, employ, hire, or procure the persons mentioned in the bill of complaint to fraudulently or otherwise preempt, enter, or obtain patents from the United States for the lands described in said bill, or any of them.

2. In holding and deciding that the evidence offered was inconclusive and insufficient to prove that said defendant, James Stinson, did, as charged in said bill of complaint, pay all or any part of the moneys required to be paid upon the entry of said lands described in the bill, or any part thereof, and the expenses connected with the making and proving up of said entries, or that he committed or was a party or privy to any of the frauds charged in said bill in connection with the entry of said lands in question, or any of them.

3. In holding and deciding that the evidence offered was inconclusive and insufficient to prove that said lands in question, or any of them, were not preempted and entered by the preemptors named in said bill for their own use and benefit, but were so preempted and entered for the benefit of said James Stinson, or by the procurement, hiring, or employment of the said

James Stinson, or under an agreement, express or implied, to convey the same to said James Stinson.

4. In holding and deciding that the evidence on the part of the complainants, by which it was and is sought to set aside the patents in question, is not clear, unequivocal, and convincing, as required in such cases, but is doubtful, unreliable, and uncertain in character.

5. In holding and deciding that the evidence offered is inconclusive and insufficient to prove the fact to be, as charged in said bill of complaint, that the improvements alleged to have been made by the preemptors upon the lands in question, or any of them, were merely nominal, formal, and unsubstantial, and were not made in good faith, but perfunctorily and as a mere semblance of compliance with the requirements of the preemption laws.

6. In holding and deciding that the United States of America were barred of the relief sought in their said bill of complaint, by reason of laches and because the lapse of time rendered the evidence on the part of complainants uncertain, unreliable, and insufficient to establish fraud, as alleged; and because said defendant, James Stinson, had paid large sums of money in taxes upon the lands alleged to have been fraudulently entered by or for him prior to the discovery of the fraud, and because the right of third parties, to wit, creditors of the said James Stinson, have arisen or accrued in the meantime.

7. In holding and deciding that the decree of said circuit court dismissing complainants'

said bill for want of equity is right and just and in affirming the same.

8. In that the said circuit court of appeals did not enter a decree reversing the decree of the said circuit court for the western district of Wisconsin as to the fourteen quarter sections of land described in said bill of complaint, or as to some part of them, and adjudging that the same were entered and patented fraudulently and through and by means of a fraudulent scheme and false and fraudulent devices, representations, affidavits, and proofs, and without settlement upon or improvement of the same, as set forth in said bill of complaint, and further adjudging void and canceling said entries, patents, and all subsequent conveyances of said lands, in accordance with the prayer of said bill.

9. In that the said United States circuit court of appeals did not make and enter a decree reversing the decree of said circuit court for the western district of Wisconsin in respect particularly to the lands entered in the year 1854, and described in said bill of complaint, and adjudging void and canceling the entries, patents, and subsequent conveyances of each separate quarter section thereof, on the ground that the title thereto was obtained from the United States fraudulently and by means of a fraudulent scheme and the false and fraudulent devices, representations, affidavits, and proofs set out in said bill of complaint, and without residence upon or improvement of the same, as required by the preemption laws.

10. In that the said United States circuit court of appeals did not enter a decree herein reversing the decree of said United States circuit court for the western district of Wisconsin, in respect particularly to the entries made by Lorenzo Johnson, Peter Norell, Andrew Svenson, and John Johnson, second (otherwise called John Lonquist), and adjudging void and canceling the entries, patents, and subsequent conveyances of the lands entered by them, respectively, and each separate quarter section thereof, on the ground that the title to the same was obtained fraudulently and through and by means of the fraudulent scheme and false and fraudulent devices, affidavits, and proofs set out in said bill of complaint, and without residence upon or improvement of the same, as required by the preemption laws, and further, because said preemptors were, and each of them was, at and prior to the time of the alledged entry of said lands, a resident of the State of Minnesota, having families residing, and who continued to reside in said State of Minnesota from said time until long after said lands were conveyed to said James Stinson.

11. In that said United States circuit court of appeals did not enter a decree reversing the decree of said United States circuit court for the western district of Wisconsin in respect particularly to the lands entered by Aaron Peterson, Martin Larsen, Sven Magnuson, and John Johnson, second (or Lonquist), and described in said bill of complaint on the grounds already stated, and on the ground and

for the reason further that said preemptors, and each of them, after making a pretended settlement upon said lands, abandoned the same and returned to their homes in the State of Minnesota and there remained and resided for nearly a year before proving up and obtaining preemption certificates for said lands, and were so residing in said State of Minnesota at the time of so proving up and obtaining such certificates, and thereafter continued in said State, and never resided in the State of Wisconsin.

12. The said decree of the United States circuit court of appeals is contrary to law and not conformable to equity.

13. The said decree is contrary to the evidence in the case, and is against the clear weight and preponderance of the evidence.

In order that the foregoing assignment of errors may be and appear of record, the complainants present the same to the court and pray that such disposition may be made thereof as shall be in accordance with law and the statutes of the United States in such case made and provided, and complainants pray that said decree may be reversed and that a decree may be entered granting to complainants the relief prayed for in their said bill of complaint.

STATEMENT OF THE CASE.

The defendant, James Stinson, a young Canadian, in the year 1854, or shortly prior thereto, in connection with a number of capitalists, planned to lay out a townsite upon what has since become the city of Superior, Wis. He was a member of the townsite company and

was much interested in the project, and to a certain extent had personal charge of the improvements undertaken by the promoters. Believing that the place had a great future on account of its situation upon a beautiful bay and harbor at the head of Lake Superior, he desired, personally, to procure all the lands he could in addition to those procured by the townsite company. The lands in question were unsurveyed. Nothing could be done until they were surveyed, and then, under the laws and regulations in force at the time, the lands must, after having been surveyed, have been put up at public auction at the land office of the district in which they were situated and sold to the highest bidder. To obtain them Stinson might have had to pay a very high price by the usual process of competitive bidding. Such lands as might not have been sold at this public sale would then have been open to cash entry and could have been procured in any quantity at the minimum Government price of $1.25 per acre. To avoid this process of public auction or subsequent cash entry there was but one method, namely, preemption, and then no one could procure more than 160 acres, and that quantity only under certain well-defined restrictions provided by the preemption law. These restrictions were as follows:

1. The entryman or preemptor must be a citizen of the United States, or have declared his intention to become such in accordance with the naturalization laws.

2. He must make a settlement in person on the land which he proposes to purchase.

3. He must inhabit and improve the land and erect a dwelling thereon.

4. The lands sought to be preempted must not exceed 160 acres in area, to include the residence of the claimant, and the claimant must have made no previous entry or claim under the preemption laws, and must not have abandoned his residence on his own lands in the same State or Territory to reside on the public lands.

5. He must make oath, before the register or receiver of the district in which the lands are situate, among other things, that he has not settled upon and improved such land to sell it on speculation, but in good faith to appropriate it to his own exclusive use.

6. He must also make oath that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title he may acquire from the Government of the United States shall inure in whole or in part to the benefit of any person except himself.

7. Before being allowed to enter the land he must make proof of the settlement and improvement required by law, to the satisfaction of the register and receiver of the local land office.

8. In the case of unoffered lands, such as were those in controversy, he must within three months from the time of settlement upon the lands file a declaratory statement in the land office describing the lands settled upon, giving the date of settlement, and declaring his intention to claim the same under the preemption law,

after which he is allowed thirty months within which to complete his improvements, make proof thereof at the land office, and pay for the land.

Being an alien, Stinson could not avail himself directly of the preemption act to procure even 160 acres. It is plain from all the facts that he conceived the idea of procuring the lands by fraud through the medium of the preemption act, thus avoiding the danger of losing them by competitive bidding beyond the price he could afford to pay, and also the possibility that someone would be in advance of him on cash entry. Early in the spring of 1854 he approached George K. Stuntz, an old surveyor who lived at Superior and who did much surveying for the Government in that vicinity. He asked Stuntz if he would undertake to subdivide the township early that season, telling him that "there is a lot of us who want to get this done." He further told Stuntz that he would get survey orders if he, Stuntz, would engage to do the work. Stuntz consented to accommodate him. Stinson told Stuntz that he wanted the work done quietly, and that they were anxious to make land investments. The work soon afterwards was offered to Stuntz by somebody representing the Government, and as fast as the land was surveyed Stinson was there with men, a crowd of them, twelve or fifteen in number, who entered upon the work of putting up shanties as fast as the surveyor located corners. In this connection Stinson was very active.

Previous to this time, in Chisago County, Minn., near St. Paul, living upon a farm owned by Stinson, was a Swede named John Johnson, who had learned to talk the English language. He lived in the midst of a settlement of his countrymen, many of whom had just arrived from their native land and were wholly ignorant of the language, laws, and customs of this country. Stinson went down there, making a journey of six days through an almost trackless forest, and employed this Johnson. He admits this in his answer. Johnson immediately began to employ men to go to Superior. Ostensibly the men were employed to go for labor. But it is a significant fact that they were required, if they had not already done so, to take out their first papers—that is, to declare their intention to become citizens of the United States. It was also a requirement that they should not have preempted lands. When a party of them was collected they were each to receive $30 per month for their services. Stinson and Johnson employed these men to meet at Taylors Falls, a small town nearby, Johnson acting as interpreter. When they arrived at Superior they went to work in cutting and clearing the streets. After being employed a short time at this they were taken upon the land and there built cabin shanties. Stinson was about all the time directing their movements. After being there a short time and the first necessary steps in the fraud having been thus taken, their employment ceased, and Stinson and Johnson

conducted them back to Taylors Falls, where they parted, with the understanding that they were to meet at Willow River, as it was then called, where the United States land office for that land district was then located. They were paid money for their services. They made false and fraudulent affidavits, and the money was paid to the land officers by Stinson, and upon the final receipts being furnished the preemptors, the lands were immediately deeded to Stinson, and they then returned to Chisago County, from whence they came. They were caused to act as witnesses for each other. All swore—that is, subscribed their names and went through the pretense of swearing—to the contents of affidavits the nature of which they did not understand, and which contained recitals grossly fraudulent and false from start to finish. The next year another party went through the same process at Willow River, and thus the whole of the lands in question were procured. The nature of the proof required may be gathered from those made, and we herewith set forth examples of each from the printed record.

Here is the preemption proof of Andrew Swenson:

> LAND OFFICE, *Willow River, Oct. 24, 1854.*
>
> Andreas Svenson applied to prove his preemption to SW. ¼ of sec. 28, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 28, 1854.
>
> I, Laurens Johnson, of Douglas County, Wis., do solemnly swear that I am acquainted with Andreas Svenson, of said county; that *he is a married man* and filed a declaration to become a citizen of the United States; that he

commenced improvements and made a settlement on the southwest quarter of sec. No. twenty-eight, in township No. forty-nine, of range fourteen, on the twenty-eighth day of Sept., 1854. At that time he commenced the erection of a dwelling house, which he continued working at until completed, *at which time he moved into and has continued to occupy. Said house is built of logs about 12 by 14 feet on the ground, one story high, with fireplace, etc., and is a comfortable residence.* He has also cleared a parcel of land ready for cultivation and cut a quantity of rails on said land and I have reason to believe *he intends making additional improvements on said land.* He has not quit his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his procuring a title to said land.

LAURENS (his x mark) JOHNSON.

Subscribed and sworn before me this 24th day of Oct., 1854.

J. O. HENNING, *Register.*

PREEMPTION AFFIDAVIT OF ANDREAS SVENSON.

I, Andreas Svenson, of the county of Douglas, State of Wisconsin, claiming the right of preemption, under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant preemption rights," approved September 4th, 1841, to the southwest quarter of section number twenty-eight of township number forty-nine N., of range number fourteen W., subject to sale at Willow River, do solemnly swear that I

have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory in the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

(Original.)

ANDREAS (his x mark) SVENSON.

I, J. O. Henning, rgt. of the land office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Register.*

Some of the proofs were made before the officers of the United States land office at Willow Creek, and the deeds from them to Stinson were acknowledged before one Moses Gibson, notary public, whose office was with the officers of said land office, and who was at that time a candidate for State senator and a partner in business with one of the land officers. This man was subsequently a clerk in the Treasury Department at Washington, and was sworn in the case and testified that at the time of these occurrences he was running for the State senate and had started off on his campaign; that

Stinson, for want of a notary public to take such acknowledgments, followed him across St. Croix Lake, caught up with him in the wilderness, induced him to go back and administer the necessary oaths, and paid him $20 in gold for his services. The clerk in the land office, one John S. Moffat, testified that Stinson was in the office while the proofs were being made, and that he saw Stinson hand the men something which he supposed to be money, and that this happened on two different occasions. He affirms the testimony of Gibson that the papers were made out and acknowledged before Gibson and remembered the names of two of the parties.

Later on the patents were issued for these lands by the United States Government to the parties who had acted as preemptors, and Stinson continued in possession of the lands, either personally or through his son, the pretended conveyee, down to the time of the beginning of the present suit. At the time when the first case was instituted the lands were still his—that is, in his name—but were afterwards conveyed to his son; but ample proof was taken in this case showing that no consideration passed from his son to himself for such conveyance.

STATEMENT OF DEFENDANT'S CASE.

The defendant, from proofs taken and evidence submitted in his behalf, in substance and effect, while admitting the employment of John Johnson as his agent, claims he employed the entrymen for the legitimate purpose of cutting out and clearing the streets, and

building a dock in Superior; that while the men did enter the lands in question at the time, they did it on their own account and he merely purchased from them after their final proofs had been made and they had secured their final certificates or "duplicates," as they were commonly called, from the land officers at Willow River. He submitted evidence to support the allegations in his answer, that he purchased for his father and that he obtained all the lands which did not descend to him from his father through the settlement of his father's estate; that he did for a long time pay taxes on the lands; that they were permitted to go to sale and he then procured tax titles on them; that there were and are many tax levies against them unpaid, and that in addition to the conveyance to defendant Henry J. Stinson, certain conveyances were made and one railroad right of way condemnation had across portions of the land. He also made claim that the conveyance to his son, said Henry J. Stinson, was in good faith for the valuable consideration of $40,000, which was represented by his son's services to him, but no part of it in money. As on the main substantive facts the testimony and evidence will best demonstrate the facts, we refrain from further statements until such testimony and evidence is considered in detail by way of argument.

The case made by Henry J. Stinson in his testimony was almost wholly confined to his claim of good faith in the purchase from his father of the lands in question.

THE PROOFS.

Before taking up and recounting the proofs on both sides it may be well to show the important particulars in which the defendant, Stinson, in his answer, testimony, and evidence has made admissions, has been guilty of plain evasions, and has wholly failed to meet complainant's averments, testimony, and evidence.

Mr. Stinson made answer, under oath, and he was subsequently called for cross-examination by the complainant. His answer is found at pages 24 to 39 of the record, and his examination at pages 148 to 192, inclusive, of said record.

In his answer he admits:

1. That all the proofs and entries were made on the dates charged in the bill of complaint.

2. That the proofs presented to the land office were to the effect stated in the bill, and upon them the entries were allowed.

3. That in each case deeds were made to Stinson on the very day of entry.

4. That he was very much interested in Superior town site.

5. That he employed John Johnson to hire men to go up there and work.

His denial, at page 32, of the fraudulent character of the proofs made to the land office, is evasive, and contains a negative pregnant, namely, in the denial that *all* such oaths, etc., were false and fraudulent.

The same is true of the next paragraph, in which he denies that *neither* of the persons named resided upon and improved the land in good faith, etc.

He does not allege that the law *had been* complied with, but that he *was so informed.* He avers that at the time the conveyances were made *he believed* the men had complied with the law and the rules of the land office so as to entitle them to entry. This is a statement of his legal conclusion, but no denial of the *facts alleged,* nor of *his knowledge* of such facts.

Turning to page 36 it will be seen that he only states *on information and belief* that the land was purchased after entry, which is either intentionally evasive or else leaves it open to inference that he left the arrangements to his agent.

In his examination he admitted that the wages promised the men was $30 per month (p. 171) and that he may have furnished provisions too (p. 170); also that he was out in the woods and saw the Swedes there making one of these shanties (p. 174); said he *could not recollect* if in settling with the men he made any deduction for the time they were at work in their claims, though he knew the *association* did not pay for that (p. 175), nor whether he did not make an appointment with them at Taylor's Falls to meet him at Hudson (p. 176); admitted that he did meet them there a week or ten days later as sworn to by them, and "secured" the claims (p. 177); admitted he had read the testimony of the Government's witnesses before his examination (p. 180), and though he claimed he was acting for and had to account to the association, in respect to the hiring of the men (p. 170), and for his father in respect to the land investments, he refused to

disclose and denied all knowledge of the amounts paid them on either account (pp. 177–182); declared he did not know whether the men were paid for their time coming down to Hudson, but thought it was included in the deed, as all "claims" were then settled (p. 179); he at first denied that he paid the Government for the land (pp. 179–180); repeated this denial in most positive terms (p. 188); immediately afterwards admitted that he may have done so through Gibson or Johnson (p. 190); later went back to his denial, and this time denied any advances *by agent* (p. 192); after having a second time admitted that he may have done so, either personally or by agent, and accompanied it by the statement that *it was his habit thus to advance money* (p. 192); admitted that he employed Gibson (pp. 178–9); that he traveled with the men on the return journey to Taylors Falls (p. 182); that besides being employed to hire the men he may have acted for him in paying money (pp. 183, 190, 192) or negotiating for land, and had, he "supposed," something to do with the 1855 claims, though he would not admit employing him; finally he admitted that he was at Hudson in 1854 when these preemption entries were made, and that he "probably" knew the Swedes were to be there (p. 191).

The facts which he does not deny are, perhaps, equally significant with those he expressly admits.

Thus he does not deny the conversation related by the surveyor, *Stuntz*, nor any of the facts sworn to by him.

He does not contradict the testimony of David Carlton in any particular.

He makes no denial of the buying off of Burbank to leave his claim, the giving to him of a written proposition or obligation, or the payment to him of money after the patent issued, all of them damaging facts, showing his knowledge of the weakness in his title.

He does not deny the statement of Lorenz Johnson that he told Johnson to "go to the woods."

He does not deny coming to Lonquist in the woods and saying he wanted them to go down and preempt the land for him, the very day preceding their start for home, as testified by Lonquist.

He does not controvert Gustav Johnson's story respecting the conversation with his brother, John Johnson, at the Fuller House in St. Paul.

Neither does he deny the testimony of Peter M. Peterson that he directed him to "go to the woods," and that just before starting homeward he cautioned the men to "let no one have the claims but him."

Nor does he make denial of the facts sworn to by John S. Moffatt.

While it is conceded that a patent should not be set aside on doubtful or inconclusive testimony, and especially after the lapse of so many years, we respectfully submit that the evidence in this case is clear, convincing, and satisfactory upon both issues—i. e., as to the preemptions being made for the benefit of Stinson and as to the fraudulent character of the proofs filed in the land office; and we confidently assert that seldom in a

court of justice has a case of fraudulent combination been more clearly proved, even where the events were of recent occurrence.

We conclude with a citation of authorities.

ARGUMENT.

In order to understand clearly the evidence of the several witnesses, its bearing upon all the matters in controversy, and the weight and effect to be given to it in determining the issues herein, it is necessary to keep in mind the fact that the entries in question upon which the fourteen patents were issued, whose validity is assailed in this action, were made by two separate bands of Swedes in two successive years, viz, in 1854 and 1855.

The alleged settlements in 1854 were made by John Johnson, Lorenz Johnson, Sven Larsen, Peter Norell, Andrew Swenson, Aaron Peterson, Martin Larsen, John Johnson (known as John Johnson, 2d, and later, as John Lonquist), and Sven Magnuson. Those of 1855 were made by Otto Wallmark, Andrew Wallmark, Gustave Johnson or Vieborg, Israel Johnson, and Ole Westerland.

We give herewith, and immediately following this paragraph, a schedule showing by separate numbered columns:

1. The land office numbers of the several entries.
2. The names of entrymen.
3. The names of entrymen who were married at the time of taking up claims, and whose families were living in Minnesota, indicated by the letter M.

4. Those who were living at the time of the trial, indicated by the letter L.

5. Those who have given testimony in the case, indicating complainants' witnesses by the letter C, and those for the defense by the letter D.

6. The dates of alleged settlement.

7. Dates of making proof and payment for the land and conveying to Stinson.

8. Dates of the several patents.

This is given for convenience of reference in considering the testimony.

The entries are arranged in classes, the first showing those preemptors who located in 1854, and proved up, the same year; second, those who located in 1854, but failed to prove up until 1855; and third, those who both located and proved up in 1855.

Schedule.

CLASS 1.

1	2	3	4	5	6	7	8
1847	Andrew Swenson	M.	....	....	Sept. 28, 1854	Oct. 24, 1854	Dec. 15, 1855
1848	John Johnson, 1st	....	....	....	Sept. 27, 1854	Oct. 24, 1854	Dec. 15, 1855
1849	Peter Norell	M.	L.	D.	Sept. 27, 1854	Oct. 24, 1854	Dec. 15, 1855
1850	Sven Larson	....	....	....	Sept. 26, 1854	Oct. 24, 1854	Dec. 15, 1855
1851	Lorenz Johnson	M.	L.	C.	Sept. 28, 1854	Oct. 24, 1854	Dec. 15, 1855

CLASS 2.

2906	Aaron Peterson	....	....	....	Aug. 17, 1854	June 1, 1855	May 1, 1856
2907	Martin Larson	....	....	....	Aug. 17, 1854	June 1, 1885	May 1, 1856
2908	Swen Magnuson	....	....	....	Sept. 26, 1854	June 1, 1855	May 1, 1856
2212	John Johnson, 2d (Lonquist)	M.	L.	C.	Sept. 26, 1854	June 22, 1855	May 2, 1859

CLASS 3.

3208	Otto Wallmark	....	L.	D.	June 11, 1855	June 22, 1855	May 1, 1856
3209	Gustave Vieborg	....	L.	....	June 11, 1855	June 22, 1855	May 25, 1865
3210	Andrew Wallmark	....	L.	....	June 11, 1855	June 22, 1855	May 1, 1856
3211	Ola Westerland	....	L.	....	June 11, 1855	June 22, 1855	May 1, 1856
3213	Israel Johnson	....	L.	C.	June 11, 1855	June 22, 1855	May 1, 1856

In 1854 a number of capitalists, among whom was Stinson, combined, in what in these later days would be called a syndicate, to lay out a town site upon the land now known as the city of Superior. He expressly states in his answer that he was much interested in the project and to a large extent had personal charge of the improvements undertaken by these parties. He was apparently an enthusiast in the work. The location was a fine one at the head of navigation in Lake Superior, having one of the finest harbors ever formed by nature. Naturally, outside of the lands selected by the syndicate, he desired to obtain, individually, as large a tract as possible. A surveyor residing there, named George R. Stuntz, who had already done much in his profession for the Government in that vicinity, testifies that Stinson came to him in the Spring of 1854 and asked him if he would undertake to subdivide a township containing the lands in question early in the season, saying to Stuntz, "There are a lot of us who want to get this done." Stinson further told Stuntz that he would get a survey order if Stuntz would do the work. The latter consented and Stinson said to him: "We are anxious to make some investments in lands here and we want to get through with it quietly." These lands were not subject to private entry and were not so subject until sometime after 1855. The only way of acquiring them, then, was by preemption, and such preemption must necessarily have been clandestine and fraudulent. All the testimony shows that the lands were worthless for agricultural purposes

and chiefly, if not wholly, available for their peculiar location.

The order for the survey was subsequently sent to Stuntz. How it was procured he did not know, but it appears that Stinson was well aware of the time when the surveying was to be done. The testimony of Stuntz respecting the time he made the survey and what happened is as follows:

Stuntz testifies:

> I saw Stinson there with some men the first day I operated under the contract. I got my crew made up and went into the woods, and there was a crowd of men following me all day, and Stinson was one of them. He had twelve or fifteen men with him in the morning, I should think. I had a nice day, and I ran up 5 or 6 miles that day. These men with Stinson were mostly half-breeds. I don't remember any Swedes. I don't think there was. They were not known to me. He seemed to be talking with them a great deal. I was busy running lines, and didn't pay much attention to them. I noticed they put up shanties as fast as I would locate corners. I would run to a random line and get back to the quarter post and find a shanty well under way on each quarter. I think I surveyed eight claims the first day. I don't know what claims they were, nor the names of them that filed on them. There seemed to be a crowd making these shanties that day, but who they were for I didn't inquire. It looked as though Stinson was very active

around talking with them. These claims were on sections 25, 26, and 36, in town 49, range 41. (Rec., p. 129.)

Stuntz's evidence does not identify the particular land upon which Stinson located the parties, nor does it show that any of the lands described in the bill of complaint were covered by the entries made on the first day of the survey, which was begun in June, while the earliest of the alleged settlements in this case was in August. It is probable that these first locations were among other lands which Stinson located in a similar manner, as he admits in his answer that the lands in controversy were only a part of those he secured in that vicinity. Whether ignorant Swedes or half-breeds, it is plain that the parties were fit instruments of the proposed fraud, and the acts were evidently done in carrying out the scheme he partially disclosed to Stuntz. The evidence respecting these first locations in June was perfectly relevant and proper to show Stinson's general purpose and the motive therefor. His hunger for land was not easily satisfied, as may be judged somewhat by the extent of his present possessions, which are partially indicated by the descriptions contained in defendant's Exhibit A[6], at pages 303–309, of the record. It is also apparent that for want of available preemptors in the immediate vicinity Stinson went over into the State of Minnesota.

In Chisago County, near St. Paul, living upon a little farm belonging to Stinson, was a Swede named John

Johnson, who had learned to talk the English language. He lived in the midst of a settlement of his countrymen, many of whom had just arrived from their native land, and were wholly ignorant of the language, laws, and customs of the country, and these Stinson selected as parties who could be duped and managed to serve his purpose. Having in charge the improvements of the town-site company, a pretense of hiring them to work on the town-site improvements would aid in covering the fraud. Having formed his plans, he went in person to Chisago County, a six-days' journey on foot, through an almost trackless forest, which shows the strong incentive for his scheme.

HIRING OF PREEMPTORS.

This was in the summer of 1854, and subsequent to the time when Stuntz testified he was so active in the use of half-breeds for purposes similar to those charged in this complaint. Arrived in Chisago County, we find him using this same John Johnson, whom, as we have seen, he admits having hired to induce the men to go to Superior. (See answer, p. 36, and Stinson's testimony, pp. 168–172.) Stinson does not admit that these men were hired to preempt the lands or that he authorized Johnson to hire them for such purpose. We could not expect him to do so, as it was a part of the fraud charged. But circumstances in the evidence adduced clearly indicate such fraudulent intent. Laborers for Superior need not have been citizens of the United States nor have declared their intention to become such. Neither was it important that they should

not have previously availed themselves of the preemption laws to obtain lands from the United States. Yet Stinson's agent, in securing laborers for Superior, plainly made these requirements of the men he employed. In these respects, as well as others equally pertinent to the case, let a large number of those sworn as witnesses speak to the point:

John Lonquist testifies (Rec., p. 109):

> John Johnson said that I had to have my first paper—you know the first paper—along with me, and then we went down to Mr. Stannard, down in Taylors Falls, and he gave us the paper, the first paper, and then we went from there to Superior. Andrew Ogren and Helleen, John Johnson, and some more I don't remember, went with me to Taylors Falls. Then, after I got my first paper at Taylors Falls, I went on to Superior.

(An examination of some of these naturalization papers will show that Mr. Stannard was the deputy clerk of the court.)

Peter Norell, not one of the entrymen, but a witness introduced by the defense, said, on cross-examination:

> I took out my first papers at Taylors Falls. It was before Mr. Stannard, the deputy clerk. I can't say what day it was. It was sometime that summer of 1854 anyhow, if it was August or June or July. It was before I went up to Superior. There was four or five or six of them there when I took out my papers,

and I can't recollect the names. I guess they is dead most of them. These men who were there together were some of the party who went with me to Superior. We was hired to go up there to work, and we went, starting, as near as I can tell, about the middle of August. I think it was the blacksmith—there was two of them came up there and hired us. I think one was John Johnson and the other a blacksmith from Taylors Falls. I don't remember his name. I don't know which of them suggested I should take out my first papers, John Johnson or the other man. There was four or five of us there, and they said, "We are going to take out our first papers now. We are going to have a right to vote for schools and a president and everything, that is what they say." I think it was the blacksmith, or there was two of them, spoke to me about going to get the papers. John Johnson and the blacksmith were together. They was both of them talking about it. They say, "We aint got no right to vote or say a word before we get out the papers." That is what they told me, and then I thought it don't make no difference, I came in here to settle in the United States, and I thought it was no much difference, I going to take the paper out.

Several of these declarations have been found in the land office and were introduced in evidence. They are dated within a few days of the departure of the party on their journey to Superior, and to that extent are corroborative of the testimony of Lonquist and Norell.

See declaration of Andrew Swenson, dated July 28, 1854, page 475.

Declaration of Peter Norell, dated August 7, 1854, page 474.

Declaration of Swen Larson, dated August 8, 1854, page 473.

Declaration of Lorenz Johnson, dated August 8, 1854, page 474.

It would naturally take some little time to employ and get together a party of fourteen to sixteen men, the number which the witnesses say were in this expedition (testimony of Lorenz Johnson, p. 100; Peter M. Peterson, p. 123; Peter Norell, p. 241), to enable each to make his arrangements for leaving home and to equip and provision them for a six days' journey through the woods; and it was during this period of preparation that the matter of naturalization was looked after. This would explain the few days difference in the date of the naturalization papers. But why all this care to see that this party of laboring men had taken the initiatory steps toward citizenship? Neither Stinson nor Johnson were engaged in a political campaign in Wisconsin. According to the theory of the defense, and according to Stinson's testimony, the men were merely employed for a few weeks' work upon the streets and docks at Superior. They had no thought of becoming residents of Wisconsin. Indeed, several of them had families living in Minnesota, which State all of them in their testimony uniformly refer to as their home. Naturalization would not make them more efficient workers—

would not enable them to cut more trees, shovel more dirt, nor handle more lumber.

It was necessary to qualify them to do that which constituted the real object of the expedition, and their employment, viz, to preempt land for Stinson, and that is the explanation, and the only explanation, of the pains taken to have these foreigners, who were to be the tools employed by him, properly equipped at the outset with naturalization papers, and this marks the second step in carrying out the scheme, the inception of which we have seen in his interview with the surveyor.

It appears that the party came together at Taylors Falls, from which point they took their departure in a company for Superior, and a mercantile firm at that place, Stannard & Fox, provided them with their outfit of provisions, etc., for the journey.

Peter M. Peterson, one of the party, testified (p. 122):

> I did not take any land in Douglas County, but I was working for Stinson there. There was another fellow Stinson hired to get fifteen or sixteen men to go up there and work for him, and so he come to us fellows around there and told us if we want to work we can go up there for $30 a month, and we all concluded that we would go, and when we got to Taylors Falls he asked us if we had any claims before, and there was two or three—I can't remember their names—more besides me, that had claims down at Chisago Lake, and we could not take any claim, and he said, "If you have a claim we don't want you." The boys said, "Well, if

you won't let us all go, none of us will go," and that is the way we come to go there. We worked there a couple of months.

And at the same page he says: I think it was Stanner who asked me at Taylors Falls if I had a claim before. If I remember right, Stanner and Fox had a store together, and they were going to give us provisions to carry us along there at Superior. It was Fox who told me if I had a claim already they didn't want me to go.

This evidence shows conclusively that the ostensible purpose in the employment of these men, viz, working on the streets and docks at Superior, was not the real or principal object of such employment, and only more clearly demonstrates what was shown by the solicitude regarding their naturalization, that the main thing kept in mind in making up this company was to procure men who were *legally qualified to act as preemptors.*

There is plenty of other evidence, both direct and circumstantial, all pointing in the same direction.

Lorenz Johnson, who entered the northwest quarter of section 33, town 49, range 14, testified (p. 98):

John Johnson, I guess, first spoke to me about taking up land in Douglas County. It was at Taylors Falls. Nobody was with me. He said nothing except he wanted me to go and work by the month, $30 a month wages, at Superior. He didn't say anything particular about taking up the land, but we should take 160 acres each. I mean by that James Stinson. He was in Superior. I don't understand what

Stinson says. It was only Johnson talked to me about it. Johnson was hired just like me from Stinson. He said so himself. Stinson hired me just the same as the rest. I was at Taylors Falls when he hired me. Stinson and Johnson were together at Taylors Falls when these men were hired. I didn't speak English then, but Stinson would speak to Johnson, and then Johnson would speak to me in Swedish. He hired me at $30 a month. When we got to Superior we went to work first to lay out the streets. John Johnson told us where to go on the land. We built cabins—shanties. My claim was 160 acres. These other men who went over there with me had claims like mine. I don't know anything about the size, but suppose they took 160 acres each. I staid in Superior two months. I was not paid until I came to Taylors Falls. There I was paid at the rate of $30 a month for two months.

While we were in Superior we built a pile driver on the lake there, and then cleared the streets. Stinson was there all the time. He went down with us to Taylors Falls. He said when we left him, we should meet him in Hudson ten days after. We left him in Taylors Falls. We were all together coming down, John Johnson and the rest (p. 100). All the men that went up with me worked on the streets and the pile driver. They had their own camp, and lived in it all together. * * * I went out there on that claim because Stinson told me. He went out on the land with us, the whole crew (cross-examination, p. 102).

After we had been at Superior, the first to speak about taking land was Stinson. He came in the morning and told us to go to the woods. I couldn't understand what he said, but Johnson told us so. He told us to go out in the woods that morning. Johnson went with us too. Johnson and Stinson was both there when the land was selected and we built the shanty (p. 102). I said that this man Stinson came with us all the way from Superior down to Taylors Falls. He carried satchels and came every step back to Taylors Falls.

Coming back now to the time when the men parted with Stinson at Taylors Falls, it will be remembered that they were to meet again in Hudson ten days later. Hudson, or as it was then called, Willow River, was where the United States land office for the district embracing Douglas County was then located.

The witness continues (p. 100):

From Taylors Falls I went to Chisago Lake, and then down to Hudson in just ten days. The others went down too, John Johnson, Peter Norell, Peter Magnus, and one by the name of Alstrom. Some are dead, so I forget the names of them. When we got down to Hudson I saw Stinson. He met us there. I was at the land office and signed deeds. Stinson was there with me. I got $10 when I went to Hudson. Stinson paid me the money himself. I didn't pay any money to the land office. I don't know who paid the money for the land; I did not see anybody (p. 101); I did not have any bargain with James Stinson to sell him

> this land, before I made the entry. I didn't understand a transaction like that. I had just come over from the old country, and did not understand. I just done what John Johnson told me. He told us to take some land, but I did not understand what the thing was. I didn't *pay for the* entry of the land, and I don't know who did. John Johnson told us we should meet at the land office at Hudson, and he went with us. He interpreted for us at the land office. I don't know who made out the papers.

The record shows that the proof and entry by the witness and the conveyance from himself to James Stinson were all made on October 24, 1854.

Assuming that the party started from Taylors Falls in the middle of August, as testified to by Norell, and that they parted from Stinson at Taylors Falls on their return ten days previous to entry, it will be seen that almost exactly two months had elapsed from the time the party left home until their return, so that Stinson paid witness for the entire time of his absence, including the time he was supposed to be engaged in making a settlement for his own exclusive benefit upon the land entered in his name. Comment on this fact would be superfluous.

John Lonquist, another preemptor, who, according to the testimony of Lorenz Johnson, went at that time by the name of John Johnson, 2d, testified (p. 109):

> I am a Swede, and came to this country in 1853. I did something, I guess, about taking up land in Douglas County, Wis. John Johnson spoke to me about it first. It was right at my

home. Andrew Ogren was with me. Johnson said to me that Stinson wants us to go up to Superior and work, but he don't say to me that we should take a claim for him. He said I had to have my first paper—you know the first paper—along with me, and then we went down to Mr. Stannard, down in Taylors Falls, and he gave us the paper—first paper—and then we went from there to Superior. I was to be paid $30 a month. John Johnson told me that. He didn't tell us anything we were to do before we got up there. When we got up there, he gave us an axe and we chopped down some wood right there in Superior in the streets; I believe it ought to be streets. It was all wood then. I forget how many there was of us, twelve or thirteen, I believe. We lived in a little shanty that was built, I guess, before we got there, and we stayed—all of us—in the little shanty, and took our victuals and grub there; slept in that little house all together. I forget how long we stayed in Superior. I think it was about a month. I saw Stinson there several times on the street.

Then we went out in the woods and put up the shanty, put some kind of brush on the roof, me and three others; I have forgotten their names. John Johnson went out with us, but he didn't stay there. He put each of us on the claim, but I don't know anything about the claim. He told us to stay right there and put up the shanty. I can not tell how large a tract it was I settled on. I did not understand about it. I was never told whether it was 5 acres or

160 acres, or anything. We built that shanty on the land I told you. * * * I thought it was a little shanty—four of us slept there one night. I think it was some kind of a corner, but I can't tell you about the corner. Well, I guess I think it was a section—a section corner—that is what I think. * * * John Johnson went out there with us, but didn't stay. He showed us where to build the shanty (p. 111). We slept there one night; then Stinson came there and he talked with the boys, but he never talked a word with me. I never talked with Stinson yet. He talked with Ogren. I can't tell what he said I couldn't understand. Andrew Ogren told me he wants us to preempt land for him. Stinson came there alone. John Johnson wasn't with him. Then we went out from the shanty and went home again to Taylors Falls. I forget how soon we started—I think the next day. All the boys that had been living there in the shanty went back with me. Stinson was along; John Johnson, too. We walked back.

(P. 113) At Taylors Falls Johnson gave us money. He got it from Stinson. I got $30. I can't tell how it was with the other men. I believe they get $30, too. *They didn't take me down to Hudson until the next year.* Johnson and Wallmark was there at the same time; Israel Johnson, and me. I saw Otto Wallmark and Andrew Wallmark, and I forget the other boys that was there. They stayed outside of the door, and Stinson was with them. I mean he was with the Wallmarks. They were outside of the house there. I guess guess it was the land office.

Stinson was there when I came. He gave me $2 and told me to get some schnaps. I took all the boys, and not any of them wanted to have anything, so I kept the $2 myself. After we came down again this John Johnson took us up in the land office, and there we signed. There was a fellow up there, and he stand up and told us to hold up our hands. I don't know what that means. I don't take my hand up and John Johnson take hold of my hand and lifted it up that way, and then he looked at me, and I guess we were sworn, and after that we were done. He had something to say to Stinson there, but I couldn't understand a word, so when we were done we went out again to go home, all of us. I paid no money to the land office; not a cent. I can't tell whether he paid any money for me or not. I got $20 from Stinson. It was paid by Stinson himself. He handed $20 in gold to me, and I just took it and he went back in the office again.

I don't know if I made a deed to Stinson. I don't remember the description of the land; I never heard it. I didn't ask for it, either. Stinson said something to me. I didn't see whether the other men got money from Stinson or not. He said something to me when he paid the money, but I didn't understand it.

(Cross-examination, p. 115) I couldn't talk English at all at that time, and he couldn't talk Swedish, so far as I know.

Q. You never entered any land that you know of?

A. No.

Q. You never sold any land to Stinson that you know of?

A. No.

Q. This all happened a good many years ago, and has passed out of your mind, has it not?

A. It happened a good many years ago, but I think I tell pretty well about it.

Much comment was indulged in by counsel for appellees, at the trial, upon this statement of Lonquist's, that he had not entered nor sold any land that he knew of, but, as will be seen later, his story of what was done at the land office, and when it was done, is corroborated by the written records of that office, and it is perfectly apparent from his simple but vivid narrative that he was a mere passive, ignorant tool in the hands of the appellee, James Stinson, and his man, John Johnson, and that he went through the form of entering this land at their bidding.

That the full significance of this testimony may be appreciated, it is necessary here to call attention to some other pertinent facts which appear in the evidence.

It will be seen from an examination of the preemption papers and the pleadings and stipulation in this action that four out of the nine preemptors employed by Stinson in 1854 did not prove up until June, 1855.

Thus, by stipulation found at pages 476–477 of the record, it appears that Aaron Peterson, who entered the northwest quarter of section 5, town 48, range 14, made his alleged settlement on August 17, 1854, while by the allegations of the complaint, admitted by

the answer, the date of filing his proofs and making entry was June 1, 1855.

By the same document it appears that Martin Larsen also made his alleged settlement on the northeast quarter of section 6, town 48, range 14, on August 17, 1854, and proved up and entered the land on June 1, 1855. That John Johnson, 2d (now Lonquist) made his alleged settlement on the northwest quarter of section 1, township 48, range 14, on September 26, 1854, while he proved up and entered the land on June 22, 1855. Also that Swen Magnuson made his alleged settlement on the northeast quarter of section 2, township 48, range 14, on September 26, 1854, while the proofs and entry bear date June 1, 1855.

It also appears by the bill and answer that Otto and Andrew Wallmark, two of the 1855 preemptors, made their entries on June 22, 1855, *the same day that the entry of John Johnson, 2d, or John Lonquist, was made.* The presence of the Wallmark brothers at the land office on that date is also attested by their declaratory statements (record, pages 57 and 58), and by the affidavit of Otto Wallmark supporting the Gustave Johnson claim, found at page 61 of the record. That John Johnson, first, was likewise present on this occasion is proven by Exhibit 11, being his affidavit in proof of the preemption claim of Lonquist or John Johnson, 2d, found on page 63 of the record. This documentary evidence, together with the facts detailed by the witness, clearly identify John Lonquist with John Johnson, the 2d, who entered the quarter section above

referred to, and substantiate the statement made by Lorenz Johnson in his deposition taken in 1893, that this preemptor changed his name to John Lonquist.

Take in connection with this witness' statement the testimony of witness, Peter M. Peterson, who accompanied this party both going and returning, to the effect that none of the men ever went back to their claims (rec., p. 125), *neither of whom is contradicted by any witness in the case*, and the absolutely fraudulent character of the proofs sworn to and entries made in June, 1855, in the cases of John Johnson, 2d, Aaron Perterson, Martin Larsen, and Sven Magnuson, and the consequent invalidity of the patents issued thereon is established beyond controversy.

But this is a digression from the matter we were considering, which was the proofs showing the entries to have been made by arrangement with and in the interest of Stinson.

Gustave Johnson, a witness for complainant and a brother of John Johnson, the first, but not a preemptor, testified that in 1859 he was at the Fuller House in St. Paul and overheard a conversation there between James Stinson and said John Johnson. His statement was as follows:

> My brother was talking to him there to get some land from him—talking to James Stinson. He had promised him some more land up there. He got some land from Stinson—57 acres—for a claim he made over at Superior. He promised to give him as much land at Chisago Lake as he preempted up there for him, but he only got

> 57 acres. Now he wanted another fraction there; that was what he was talking to him about at the Fuller House, but Stinson answered that he didn't have a map or else he would write out the deeds, but he didn't have a map. He also said something to my brother about not having kept his contract. He said: "You can get that land for what it cost me. You didn't fulfill your contract." That is what he said to my brother. My brother died in 1861. (Rec., pp. 116–117.)

While this testimony does not disclose in what respect Stinson claimed the contract on Johnson's part had not been performed, yet as it has already been shown that four of the party who were taken to Superior in the year 1854 failed to present themselves at the land office and perfect their entries until the following year, we may surmise that others failed entirely to prove up.

Whatever may be the true key to this conversation, the pregnant fact appears that the preemption about which they were talking, and the validity of which is involved in this action, was made pursuant to some contract between Stinson and Johnson by which the latter was to receive for his services in preempting lands for Stinson at Superior an equal amount of land in Minnesota. It should be noted that this testimony of Gustave Johnson is also entirely uncontradicted.

Peter M. Peterson, a witness for the Government, and also a nonpreemptor for reasons already shown,

viz, because he had already made a prior preemption in Minnesota, testified (commencing at page 122 of the record):

> Johnson didn't say anything to us about taking claims until we had been at Superior about a month. We were working over there clearing the streets and before we went home Stinson told us to go to the woods for claims. * * * It was John Johnson hired me. He hired me at $30 a month. If I remember right, there were fifteen that went along. When we got to Superior we cleared some streets, cut some wood, and helped them drive pile drivers. Stinson told Johnson to tell us what to do, and he let us out to somebody else to work. I don't believe Stinson had any work himself that I know of. I would not say that we had any boss at all. He did not care what we were doing, but John Johnson was the man that looked after the boys. *Stinson was there at Superior. We were along with him, and he told us about going out in the timber.* That was in the latter part of September, I think, as well as I can remember. I think it was then, but I can't remember the date we built a shanty. We was along with all the boys, Stinson himself, too. He laid out the claims himself. We did not do anything about the lands. *When we got to the woods we was building shanties for them other claimants, you see, and Stinson showed us where to build them.*
>
> I don't know if there was any fractions. There was generally 160 acres in a claim, and there was one shanty to each 160 acres. Stin-

son told the boys they should build a shanty, make a hole for a fireplace in the middle of it. *I had no claim, but I heard him tell the other boys that when we got to Hudson they should not let anybody else have the claims except him, and that they should prove up and give him the deed for it.* * * * After these shanties were built we went home, and he followed us. From Superior we went first to Taylors Falls. We traveled to St. Croix River and built a kind of flat and went down the river and stopped at a place called Sunrise, I think, and had our supper there, and then went to Taylors Falls. Except as we went part of the way on the river, we walked 60 miles from Superior right through the woods, no road at all. Then from Sunrise to Taylors Falls, 18 or 19 miles. Stinson walked along with us all the distance from Superior. * * * While working in Superior we lived in kind of a log house all together. John Johnson was with us. He was the head man for Stinson. *None of the men have returned to these shanties. We all went home together.*

Peter Norell, a preemptor, *and a witness produced on the part of the defendants*, while he denies that he was in terms hired to preempt land, yet agrees substantially with complainant's witnesses in respect to what was done.

He testified (pp. 251–252) that he was hired by a blacksmith from Taylors Falls, whose name he had forgotten, who came to him with a man named Ogren (Ogren being another name for Swenson, one of

the preemptors), that he was to have $30 per month; that all of his party were hired on the same terms; that before starting he was persuaded to take out his first papers (pp. 251–252) that the party, consisting of some fifteen of his countrymen, started out together from Taylors Falls about the middle of August (p. 242) and walked all the way to Superior, a six days' journey (p. 243); that he was not told what he was to do until he reached Superior (p. 257); that after they arrived there they all lived together in a log house and worked upon the streets and also upon a steamboat bridge, by which he evidently meant a dock (p. 242); that they got their orders through John Johnson, or Nils Berg, another of the party who could speak a little English (p. 254), and that a few days before leaving Superior Johnson and Nils Berg spoke to him about going out in the woods and taking a claim (p. 257). He protested it was no place to live and he did not care for a claim, but being told the rest were going to make claims he consented to do likewise (p. 258). He says Johnson put him on a piece of land and showed him where to build a shanty and instructed him what he was to do (p. 258). After his shanty was built and he and another, whom he refers to as his "witness," had slept a night apiece in each other's shanties, this is his account of what took place (pp. 260–1): "Then they came rushing up saying that we had to go down."

Q. Who came rushing up?

A. Nils Berg and John Johnson.

Q. Told you you would have to go down where?

A. *Go home; leave the place and go home to Chisago.*

Q. *Did they say why you would have to go home?*

A. *Oh, well, they say, "The work is done."* * * * I stayed on the claim three or four days.

Q. Well, while you were doing that, were you also working on the streets as well?

A. No; I worked on the claim.

Q. And then after you got your shanty built and slept in it, and slept in this other witness's shanty, Johnson and this other man came out and told you that you would have to go home; that the work was over?

A. Yes; that is what he said.

The streets in Superior were not finished then, not hardly. We cut the woods out of the streets there, the main street; cleared the first street close to the bay; just one street, and the bridge that I speak of, that wasn't built; it wasn't hardly done. It wasn't finished when we came away. Nils Berg and Johnson told us to go home. They came up there, it was six or seven or eight of them come up to my claim there and say they was ready to start for home. They said nothing about going down to Willow River, not a bit.

The expression "the work is over," or "the work is done," is worthy of particular note. He testified that only one street had been cleared, and that the "bridge" or dock was still unfinished when they came away (p.

261). Stinson testified that work was plenty and labor scarce (p. 187), and the same conditions still prevailed in 1855, for Otto Wallmark so testified and gave this as one of the reasons which induced him to go up there (p. 219.) They had then been out in the woods some three or four days, and had done no work in town (p. 262). The expression could not refer to work they had already abandoned. Neither did it mean there was no more work there, for that was as far as possible from being true. *Plainly, and beyond controversy, it meant that having now gone through the form of making preemption settlements upon the land pointed out to them by Stinson, or his agent Johnson, the job they came there to do was completed, and it was time for them to return home.*

Norell further testifies that they started right away after this for home; that the entire party who went up there returned in company (p. 255); that Stinson came with them as far as Taylors Falls, walking all the way except from St. Croix, where they built a raft, to Sunrise, on the river, about 18 miles from Taylors Falls (pp. 255, 256); that he was paid by Stinson at Taylors Falls, and, like Lorenz Johnson, was paid for two months' time (p. 255); that from Taylors Falls he went home to Chisago Lake, where he arrived the forepart or middle of October (p. 243).

He had been home from one to three weeks when Berg, in company with Johnson, came over and told him they were going down to Hudson to "prove up." He states that this was the *first he had heard* about proving up on the land;

that he did not understand what was meant, and that Berg had to explain it to him. If this and his story of the subsequent transactions were true, it would not establish a *bona fide* preemption, but would show that he was an ignorant tool in the hands of Stinson and his agents, without a contract perhaps in the technical sense, for the doing of the particular acts, but submitting to his control, and while in his employ going through the mechanical processes of building a shanty and performing the other acts of pretended settlement, and then signing such papers as he was told to by Stinson, or his go-betweens. We believe this is a mere pretense on his part, possibly induced by a hope that he may in some way reclaim the land now it has become valuable, and we claim that his conduct all through the transaction evinces that he well understood the preemption was made for the exclusive benefit of Stinson. We point to the fact, to which he had already testified, that he and his "witness" slept one night, alternately, in each other's shanties on the claims (pp. 243, 261), as showing that he understood proof was required to be made.

Even upon his own story, however, it is clear that when called on by Johnson and Berg about proving up, he had no notion of settling on the land, or, in the language of the statute, of appropriating it to his own exclusive use, but had already dropped it from his mind. So far as he was concerned, his work was done, and having nothing further to detain him at Superior he had gone "home."

He accompanied the others to the land office at Hudson and signed some papers. He claims he did not know the nature of them, but that he signed because Berg and Johnson told him it was "all right" (p. 265).

As a matter of fact, he signed a declaratory statement (p. 474), a preemption affidavit (p. 66), an affidavit in support of the claim of Sven Larson (p. 62), who, in turn, witnessed for him (p. 60), and a deed to James Stinson (p. 395).

He admits that he had not the money to pay for the land and that he paid none. Indeed, he says there was no talk among the men of using any money (p. 265). He also states that he received no money from Stinson then or afterwards on account of the land, and that the only money paid him by Stinson was the $30 a month wages paid him at Taylors Falls (p. 266).

He claims he did not sell the land and did not know that he signed a deed to Stinson, and both statements may be true. He did not *sell* the land because he recognized it was already Stinson's, and being ignorant of the laws and customs of this country he may have supposed the title went *direct to Stinson*, and that no deed from himself was necessary. That he did not know the contents of the preemption proofs may well be believed.

The land having been entered in this manner, we find that he returned at once to Chisago County, Minn., and bought 40 acres of Government land, upon which he took up his residence (p. 267). And he never afterwards paid any attention to the claim at Superior, nor made any claim to the land (pp. 247 and 268).

Assuming that he had not *sold* the land, this conduct is utterly irreconcilable with the theory that he had preempted it for himself, but is entirely consistent with the theory that he had made the preemption for the benefit of Stinson as a part of his employment.

Again, it appears by the undisputed evidence that when Stinson two years afterward desired a second deed from him, whether because the first one was executed before patent issued or because it was not signed by his wife does not appear, both Norell and his wife signed the same at once without objection and without asking or receiving any consideration. (See testimony of Levi W. Folsom, p. 347, and original deed in record, marked Exhibit A 4, W. O. H.)

It is difficult, nay it is impossible, to avoid the conclusion that there was a perfect understanding between the witness and Stinson all along, and that Norell knew, and until called as a witness in this case never questioned, that he had entered this land for Stinson. He had paid no money for the land, he had received nothing for it but the wages promised him in advance; he never looked after it, inquired about it, or claimed any interest in it, and when his employer called for a deed to perfect his title, he signed and caused his wife to sign it without hesitation. Indeed, his acts are so conclusive on this point that his *express admission* would add but little strength to the evidence.

That admission, however, we have in the shape of an affidavit made by this witness in the year 1887, about the time the United States began the first ac-

tion against Stinson to annul these patents, and found at pages 354–355 of the record.

He there stated the existence of an arrangement from the beginning for the preemption of the land in the interest of Stinson, and corroborated the testimony of Lorenz Johnson and John Lonquist in every material fact.

It is true Norell, when confronted with this affidavit, made the claim that it was not *all* read to him (p. 302), but the only part he claimed was omitted in the reading was the clause wherein it was stated that he *never built a house on the land.*

No such claim is made with reference to the statements in the affidavit that he was hired to preempt the land and that, after proving up on it, he conveyed to Stinson.

In fact, it appears that he was very careful about the making of this affidavit. He went with Mr. Streeter, the gentleman who presented it, down to the office of Peter Shaleen, a countryman of his and clerk of the court, where it was read over in Shaleen's presence. Not willing to accept a stranger's reading, he asked Shaleen to read it and, upon his assurance that it was all right, he signed it (pp. 269–271). Thus, according to his own evidence, he had Shaleen's assurance at the time that it was correctly read to him before he would sign it.

It further appears (p. 271) that he signed it with the full understanding that it charged Stinson with having taken advantage of his ignorance *to use him in making*

a preemption claim for his own benefit, the very thing charged in the bill of complaint.

Moreover, the affidavit has, beside the ordinary jurat, a certificate signed by the officer to the effect that it was not only read but fully explained to the affiant before it was signed and sworn to.

And the testimony of Levi W. Folsom and John Shaleen, respected citizens of Chisago County, and the latter probate judge of the county, not only establishes the genuineness of the signature to this certificate, but also shows that Peter Shaleen, who unfortunately is now dead, spoke both the Swedish and English languages fluently, and was therefore perfectly competent to explain anything not understood by the affiant; that he held the office of clerk of the district court for nearly twenty years, and that he was an honest, careful, and trustworthy official. (See pp. 348–351.)

It should require strong evidence to overcome the presumption attaching to this official certificate that Norell signed that affidavit with full knowledge of its contents and comprehension of its meaning, and his mere assertion that it was not fully read to him should have little weight, particularly where, as we have shown, *all his acts are in harmony with its statements.*

David Carlton, an old resident of Superior, testified in substance:

> I lived in Superior from the spring of 1852 until December, 1857. I was 33 when I left there. I knew James Stinson for

several years off and on. I saw him there with some Swedes. He brought a lot of Swedes there, and cleared the streets in what is called Old Superior. He had a good many Swedes in his employ. They were clearing the streets part of the time. By appearances I thought he had control of them. At this time I was locating land for settlers, putting them on claims; consequently we used to come in contact with one another once in a while. We were not in love with one another at any time. I could not swear to anything positive about his locating these men upon lands. I saw him out there, out on the Left Hand River. (This is another name for the Nemadji River, on which several of these claims are located.) He was there with three or four men. Was in the woods locating a piece of ground, a quarter section. A man named Castro contested the claim afterwards, but went back to Kentucky and was killed in a duel. Stinson was not doing anything himself. He was building a little shanty at this time, giving directions to these Swedes. I don't know that I ever talked with him as to whether he was locating land around there. We used to come in contact once in a while, but so far as he was concerned in respect to the land it was always John Johnson, Ole Oleson, Swen Larson, or someone else's claim. This was in the summer of 1854, as near as I recollect. * * * I was not very friendly with Stinson, nor unfriendly either. I was locating settlers on lands, and he was gobbling it up pretty fast, but we were not enemies. (See pp. 117–120, record.)

Looking back over the testimony already detailed, we see the unfolding and development of Stinson's scheme from the beginning. We note the eager desire for land springing up in his heart; we hear him whispering his desire to the old surveyor and arranging with him to run out the survey "quietly" to give an opportunity for satisfactory "investments;" we see him at first in charge of a lot of half-breeds, actively directing them and building shanties in the wake of the surveyor; then we observe him plunging into the forest and emerging again 100 miles distant, in Chisago County, Minn., gathering there a band of green Swedes and returning with them to Superior to make further "investments;" we see these Swedes acting always together, swayed with a single purpose, controlled by one will. None acts independently of the others. While it pleases Stinson that they work on the streets or docks at Superior, they all work as a party and live together in a log house. When the time arrives to make the "investments" they all quit work in a body and go to the woods. Strange to say, Stinson, who had hired them, as he says, to work in the city for the town-site syndicate, does not object to the wholesale desertion, but actually goes with them to the woods, where he and Johnson point out the claims and instruct them what to do. The men testify to this. Carlton observed it and adds his testimony to theirs. One circumstance, which should not be overlooked, is that even those of the party *who were not qualified preemptors*, like Peterson, abandoned the street work too and went into the

woods with their comrades, where, as Peterson testified (p. 123), *they built shanties for the other claimants.* He says Stinson told them to do this (pp. 122–123), and Stinson has not denied it. This shows cooperation and a joint undertaking; shows too the interest of Stinson, who paid for the work. As soon as the shanties are completed, word goes round that the work is over and the men are to go home. Stinson comes around and cautions them not to let anyone have the claims but himself. And then the entire party start on the homeward trip. It is a hard and perilous journey, yet Stinson goes with them all the way, walking and carrying his satchels most of the distance, down to Taylors Falls, where they part company, the men going to their homes and he continuing on down the river, after first making an appointment to meet again at the land office.

The culmination of the scheme is now at hand. Stinson is about to seize the prize for which he has been striving and planning. It is for this that he has taken the long journey through the wilderness. It is to keep in touch with these ignorant tools of his; to be on hand at the moment the fraud is consummated that he may receive its fruitage, and that none may escape him—this is the incentive of that long, weary tramp.

At this point we desire to call attention to what is perhaps the most important bit of evidence in the case, bearing on the existence of a preexisting contract or understanding between these men and Stinson respecting the preemption; but first a few prefatory remarks

by way of answer to criticisms upon certain of the witnesses already named.

It was charged by counsel for the defense, on the oral argument at the hearing below, that the Swede witnesses were necessarily lying and guilty of willful perjury, in so far as they undertook to testify to what Stinson said to them, because it was admitted they could not speak or understand the English language, while Stinson was unable to speak Swedish.

Yet the witnesses did not attempt to conceal these facts relied upon to sustain the charge of perjury, but frankly admitted that neither could understand the other without an interpreter, and that they depended on Johnson, or some other English-speaking Swede, and were stating only what they heard through the mouth of the interpreter and agent of Stinson. We submit that the argument is unjustifiable and the charge little short of absurd.

Moses S. Gibson, at the time he gave his testimony an employee in the Treasury Department at Washington, but formerly engaged in the exchange and banking business at Hudson, Wis., as partner with J. O. Henning, register of the land office at the time of these entries, testified that in the fall of the year in which he ran against one W. J. Gibson for State senator, and was defeated by the latter (and it is conceded that this was in 1854), he was out campaigning, and had crossed St. Croix Lake into the State of Minnesota, when he was followed up by James Stinson, who urged him to return at once to Hudson to make out some papers for

the latter, and offered him $20 in gold to do so, which he accepted. At the time agreed upon, Stinson came to the office with a band of Swedes, and Gibson filled out preemption papers for them, namely, declaratory statements, preemption affidavits, and proofs of settlement and improvement, and also made out and took the acknowledgments of deeds from them to Stinson, for all of which work Stinson paid him. He identified the preemption papers of Swen Larson, Andrew Swenson, Peter Norell, John Johnson 1st, Lorenz Johnson, all bearing date October 24, 1854, as the papers made out by him at this time, and the original deeds from these men to Stinson are all dated the same day and acknowledged before Gibson, and the body of the deeds is either in his handwriting or Stinson's.

It should be noted that Stinson admits this employment of Gibson (pp. 178–179), and though he does not remember going across St. Croix Lake after him, does not deny that it happened, while Gibson says very naturally that this circumstance made a strong impression on his mind and caused him to remember the transaction.

It may be remarked in passing that in making out these preemption proofs the concert of action still continued, the men witnessing for each other and swearing to the necessary occupancy and improvement. *Not a single outside or disinterested witness appears upon any of the papers connected with the preemption claims involved in this case.*

Now, how will the defense explain the making of an appointment by Stinson to meet these men at the land

office, and the fact that he did meet them there, when his home was in St. Paul? *He* had not personally entered any land, for being a British subject he could not. He was not there to act as a witness for them. Why then was he there? And how will they explain the Gibson incident? Gibson, it is true, was a notary public, and there was no other in Hudson; but the preemption proofs could not be sworn to before a notary, but only before the register or receiver of the land office. Presumably the land officers, as a rule filled them out. At any rate, Gibson swears he was not accustomed to do it. The presence of a notary was necessary, however, *to take the acknowledgment of deeds.* This, then, explains Stinson's need and the urgency for Gibson's return from over the St. Croix. He had made an appointment, for what? To make some deeds. And when he found Gibson was gone, he followed him up to St. Croix Lake and over into Minnesota and gave him $20 in gold to come back for the purpose of taking the acknowledgments.

Does a man do such things upon a mere *chance* that he may find a bona fide settler on the public lands who is willing to sell? Nay, it is preposterous. These lands were already promised to Stinson and he relied on his man John Johnson to bring the men around at the proper time. He was perfectly sure of the delivery, and that is why he wanted the notary there on the appointed day and why he took such trouble to find him and offered him special inducements to come back.

The proof of prior agreement between the parties would not be more clear or satisfactory, could we be admitted in

their private conferences and hear them contract in express terms.

There are no other witnesses as to these entries of 1854. Yet this is the character of proof referred to in the decree as "extremely doubtful, contradictory, and uncertain."

We earnestly submit that the description is clearly erroneous, and that on the contrary it would be difficult to conceive any proofs more direct, more harmonious, or more convincing.

PROOFS AS TO SETTLEMENT AND IMPROVEMENT.

In respect to the preemptors of 1854, the testimony on this subject is as follows:

Lorenz Johnson testified (p. 99):

> We built cabins on the land—shanties. Mine was made of chunks 6 feet long. It was just a little shanty. They put on brush for a roof. I did not live in the shanty. I was about two or three hours building it. The other men that went over there with me had claims like mine, the same thing. I don't know how many acres, but I suppose 160. We helped each other to build shanties—shanties all alike. We were not particular about it (p. 101). My family was living at Chisago Lake. Ogren (i. e., Andrew Swenson) was also a married man. His family lived at the same place that I lived, Chisago Lake (p. 102). I did not stay in my shanty one night. We men did not stay in the shanties over night. They had their own camp that they were living in. We didn't take turns

sleeping in each other's shanties. I don't recollect all, but I recollect so much that I never sleep in the shanty one night.

John Lonquist said (p. 110):

We went out in the woods and put up a shanty, put some kind of brush on the roof, me and three others (p. 111). I never was told how large my claim was, whether 5 acres or 160 acres, or anything. What I did there was to build this shanty. Four of us slept there one night. I guess they must be out there to build houses on a claim (p. 112). The kind of shanty was this. There was some logs and a place for one door and one window. We had some brush in the doorway, and the roof, too, we took out of the woods. We slept there one night. Then Stinson came, said he wanted us to preempt the land for him, and we started the next day for Taylors Falls.

Peter M. Peterson testified (p. 123):

We was along with all the boys; Stinson himself, too. He laid out the claims. We did not anything about the lands. We was building shanties for them other claimants, you see. This Stinson showed where to build shanties. He told the men they should build a shanty, make a *hole* for a fireplace in the middle of it. The shanties were of tamarack—spruce, something like that, anything we could get hold of, and put little spruce trees on the top for a roof. There was no door made, but they had some old rags they hung before the door. The shanty was probably 8 feet high; something

like that. I can't exactly tell. It was so long ago. After these shanties were built we came home.

Peter Norell, the defense's own witness, did not materially strengthen the case for them on this point. He said (pp. 242–243):

I went on the land there. I built me a shanty there, and cut some brush around there, building a little kind of a fence. I guess I planted a few beans there. I can't tell how long I stayed there; it is too long ago; I forget. I know I have been sleeping in the shanty; had a door and a smokehole, and had a window there, too, and I cooked and ate there (p. 243). From there we went home to Chisago Lake (p. 244). No; I have never been up there since. I have never made any claim to the land since, and never paid any taxes on it.

The above is his direct testimony. On cross-examination he said (p. 250):

I was married in the old country in 1852; came to Chisago Lake, where me and my brother lived together. He wasn't married (p. 250). My wife did not go to Superior with me. She was keeping the house there, and she continued to do so while I was gone (p. 259). The size of the shanty I built was about 10 feet square or 10 by 12. The door was where a man could get in there. There was no door to close the hole. I had a blanket for it. There was another hole for a window, but no window in there, some poles with birch bark on the roof. I guess I slept there two or three nights (p. 260).

> I built it so high I could stand up there. I am sure I slept there one night, and probably more, but I won't swear to it. I cooked potatoes and beans, fried pork, in the shanty—built the fire right on the ground in one corner. I left a hole through the poles for the smoke to go up (p. 262). I stayed on the claim three or four days.

The story of how Berg and Johnson came to him then, saying "the work was over," and the party were going "home," and what occurred on the way and after their return has already been detailed and needs no repetition, though its bearing on the question of the *bona fides* of Norell's claim as a settler should not be forgotten.

Continuing, he said (p. 266):

> I clear so I have a good chance for a shanty there, and make a little fence around it. I can't tell how large the yard was inside the fence. I don't care so much for that, either. Oh, 4 or 5 rods square; something like that. There was brush and spruce and fir trees growing there awful thick. I cut them down and pushed them out of the way, and grade up a place to build the shanty. I didn't plow any there, but I spaded up so much I could plant a little beans and a few potatoes. Probably I plant a little more than handful, probably a little less; I can't tell.

A glance at this witness's preemption proofs shows that he claimed to have gone on the land the very last of September, and, assuming he is telling the fact about

planting beans and potatoes, it is evident the planting was a mere sham and pretense. There certainly was no expectation of any harvest from a planting at that season, and no man who was not acting a part or following instructions would have done so absurd a thing.

The same may be said of the act of building a fence around a clearing of 4 or 5 rods square in a thick wood, where nothing was growing or could grow, and where a fence was not of the slightest utility.

These acts stamp the whole performance as a farce, or at least as one act in the drama of fraud, and show that the entire aim was to perform merely *colorable* acts of settlement.

Urgelle Gouge, an honest old French Canadian, still residing in Superior, came there in 1855. His testimony bears mainly upon the preemptions of that year, but by reference to the map in connection with his evidence, as found at pages 358 to 372 of the record, it will be seen that he covers also the NW. ¼ of sec. 5, T. 48, R. 13, on which Aaron Peterson made a preemption claim in 1854.

He testified that himself and three companions went all over and examined thoroughly this among other quarter sections, in December, 1855, and found not a trace of any building, clearing, or other improvement. He himself settled upon the NE. ¼ of the same section, being the quarter adjoining it upon the east, and lived there continuously for three years, during which time he used to hunt in the vicinity and became perfectly familiar with the surrounding lands, and that there

never was discovered any sign of improvement or habitation on the Peterson claim.

Lonquist, Peter M. Peterson, and Lorenz Johnson say the shanties were all alike, and the fact that all traces of this one had disappeared in one year demonstrates that the hut described by Norell, though not even that was habitable, was considerably overdrawn, and that the descriptions given by the other witnesses were more accurate and truthful. Compare now this evidence of what was actually *done* upon the claims, with the *sworn proofs filed in the land office*, to obtain the entry certificates entitling these supposed settlers to purchase the land, keeping in mind at the same time three important facts: (1) Four of the entrymen were married and had families living in Chisago County, Minn., at the time of their alleged settlements in Douglas County, Wis., viz, Lorenz Johnson and Andrew Swenson, or Ogren (see testimony of Johnson, p. 101), Peter Norell (see his testimony, pp. 249–250), and John Johnson, 2d (see testimony of Lonquist, p. 109, and preemption affidavit by John Johnson, p 63). (2) All the entrymen went home in the month of October, 1854, and none of them ever returned to their claims (see testimony of Johnson, p. 100; Lonquist, p. 112; Peterson, pp. 124–125, and Norell, p. 255). (3) Four of these 1854 preemptors did not appear at the land office to prove up until June, 1855, after they had for nearly a year abandoned the claims. They were Martin Larson, Aaron Peterson, John Johnson, 2d, and Sven Magnuson.

Here is the preemption proof of Andrew Swenson:

LAND OFFICE, *Willow River, Oct. 24, 1854.*

Andreas Svenson applied to prove his preemption to SW. ¼ of Sec. 28, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 28, 1854.

I, Laurens Johnson, of Douglas County, Wis., do solemnly swear that I am acquainted with Andreas Svenson, of said county, that *he is a married man* and filed a declaration to become a citizen of the United States, that he commenced improvements and made a settlement on the southwest quarter of sec. No. twenty-eight, in township No. forty-nine, of range fourteen, on the twenty-eighth day of Sept. 1854, at that time he commenced the erection of a dwelling house which he continued working at until completed, *at which time he moved into and has continued to occupy. Said house is built of logs about 12 by 14 feet on the ground, one story high, with fireplace, etc., and is a comfortable residence.* He has also cleared a parcel of land ready for cultivation and cut a quantity of rails on said land, and I have reason to believe *he intends making additional improvements on said land.* He has not quit his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his procuring a title to said land.

LAURENS (his x mark) JOHNSON.

Subscribed and sworn before me this 24th day of Oct., 1854.

J. O. HENNING, *Register.*

And below are those of Peter Norell, Sven Larson, Lorenz Johnson, and John Johnson, 1st.

Proofs of Peter Norell:

LAND OFFICE, *Willow River, Oct. 24, 1854.*

Peter Norell applied to prove his right of preemption to SW. ¼ of sec. 35, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 27, 1854.

I, Sven Larson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Peter Norell, of said county, *that he is a single man* (this was false), past the age of twenty-one years, and filed a declaration to become a citizen of the United States; that he made a settlement and commenced improvements on the southwest quarter of sec. No. thirty-five, in township No. forty-nine, of range No. fourteen, on the 27th day of Sept., 1854. *That at that time he commenced the erection of a dwelling house, which he continued to work upon until completed, at which time he moved into and has continued to occupy.* Said house is built of logs one story high, is about 14 feet square on the ground, *with roof, door, window, etc., and is a good comfortable residence.* He has also cleared a piece of ground ready for cultivation and split a quantity of rails on said land, and I believe he has claimed said land in good faith *and for a home for himself.* He has not quit his residence on his own lands for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

SVEN LARSON.

Subscribed and sworn before me this 24th day of October, 1854.

J. O. HENNING, *Register.*

Proofs of Sven Larson:

LAND OFFICE,
Willow River, Oct. 24, 1854.

Sven Larson applied to prove his right of preemption to NW. ¼ sec. 35, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 26, 1854.

I, Peter Norell, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Sven Larson, of said county; that he is a single man past the age of twenty-one years, and filed a declaration to become a citizen of the United States; that on the twenty-sixth day of September, 1854, he made a settlement and commenced improving the northwest quarter of sec. No. thirty-five, in township No. forty-nine, of range No. fourteen; that at that time he commenced the erection of a dwelling house, and continued working upon until completed, at which time he moved into it, *and has continued to occupy until the present time.* Said house is built of logs, one story high, *about 14 by 14 feet on the ground, with door, etc., and is a good, comfortable residence.* He has also cleared a parcel of land ready for cultivation and has cut a quantity of rails on said land, *and I have reason to believe he intends making additional improvements for agricultural purposes.* He has not quit his residence on his own lands in this State for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

PETER (his x mark) NORELL.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

Proofs of Lorenz Johnson:

LAND OFFICE,
Willow River, Oct. 24, 1854.

Lorenz Johnson applied to prove his preemption to NW. ¼ of sec. 33, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 28, 1854.

I, Andreas Svenson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Lorenz Johnson, of said county; *that he is a married man*, and filed a declaration to become a citizen of the United States; that on the 28th day of Sept., 1854, he settled upon and commenced improving the northwest quarter of sec. No. thirty-three, in township No. forty-nine N., of range No. fourteen W. At the time he commenced the erection of a dwelling house on said land, and continued working upon until finished, at which time he moved into and has continued to occupy. Said house is built of logs, one story *high, about 14 by 16 feet on the ground, with roof, door, window, etc., and is a good and comfortable residence.* He has also cleared a tract of ground ready for cultivation and has cut a quantity of rails on said place, *and I have reason to believe he has cleared said land in good faith for a home for himself.* He has not quit or abandoned his residence on his own land for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

ANDREAS SWENSON.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

Proofs of John Johnson, No. 1:

LAND OFFICE,

Willow River, Oct. 24, 1854.

John Johnson applied to prove his preemption to northwest quarter of sec. 26, T. 49, R. 14, declaration filed Oct. 24, settled Sept. 27, 1854.

I, Andreas Svenson, of Douglas County, Wis., being sworn, depose and say that I am acquainted with John Johnson, of said county; that he is a single man past the age of twenty-one years, and filed a declaration to become a citizen of the United States; has, on the 27th day of Sept., 1854, settled and commenced improvements on the northwest quarter of sec. twenty-six, in township No. forty-nine, of range No. fourteen; at that time he commenced the erection of a house, *which he had completed and has occupied to the present time;* said house is built of logs, *about 12 by 14 feet, with door, fireplace, etc., and is a comfortable residence for himself.* He has cleared a piece of ground and cut a quantity of rails, and I have reason to believe *he intends to make additional improvements on said land for farming purposes.* He has not quit or abandoned his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his securing a title to said land.

ANDREAS SWENSON.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

That of John Johnson, 2d, or John Lonquist, is worthy of particular notice. Here it is:

LAND OFFICE, *Hudson, June 22, 1855.*

John Johnson, of Douglas County, Wisconsin, applied to prove his rights of preemption to NW. ¼ sec. one, T. 48, R. 14; settled 26th Sept., 1854; filed Oct. 24, 1854.

I, John Johnson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with John Johnson, of said county and State, *that he is a married man* and a citizen of the United States; that on the 26th day of Sept., 1854, he made a settlement and commenced improving the NW. ¼ of sec. one, township 48, range 14. At that time he commenced the erection of a dwelling house on said land, *which he completed about the 10th day of Oct., 1854, at which time he moved into it and has made his home and continued to occupy;* said house is about 14 by 14 feet on the ground, built of logs, one story high, *with roof, door, window, and chimney, and is a good comfortable residence for himself and family.* He has also cleared some *two acres or more of timbered land ready for cultivation,* and split a quantity of rails on said land, and I believe he intends making additional improvements on said land for agricultural purposes. He has not quit or abandoned his residence on his own lands in this State for the purpose of making said preemption, neither am I in any manner interested in his procuring a title to said land.

JOHN (his x mark) JOHNSON.

Subscribed and sworn before me this 22 day of June, 1855.

J. O. HENNING, *Register.*

This affidavit was made by John Johnson, 1st, the agent of Stinson. He knew that John Johnson, 2d, had been away from the claim for over nine months, and that his family had never been upon it or within the State of Wisconsin. He had been sent out personally to get Lonquist and bring him down to the land office. He had not the excuse that some of the other affiants had, of not understanding English. But when he swore that the claimant moved into the house on his claim on October 10, 1854, and had since continued to occupy it, and made it his home, that it had a door, window, and chimney, and was a comfortable residence for said claimant and his family, he wilfully lied and perjured himself for his employer.

The proofs of Martin Larson, Aaron Peterson, and Swen Magnuson are lost, and could not be produced, but they must necessarily have been similar in form and showed an apparent *present residence* on the land and improvements of a permanent character, because these the law and rules of the land office required.

Moreover, each was required to swear, and did swear (notwithstanding he had not been within 100 miles of the land for nearly a year), *that he had settled upon the same in good faith to appropriate it to his own exclusive use.*

We know not what argument the able counsel for appellees can advance in support of these four entries. None whatever was presented at the hearing, and we can conceive of none. It would seem that their invalidity must be conceded.

As to the other claims, the argument of the defense is twofold.

First. Counsel say the acts performed by the preemptors were a sufficient compliance with the law, that the statute did not prescribe any length of time the preemptor should stay on the land; neither did it specify what sort of a house he should build upon it, or what other improvements he should make; consequently, any occupancy of the land and any sort of a house answers the letter of the act and creates a valid preemption.

We desire to call attention at this point to the finding of the trial court that the character of the improvements was known to the land office officials. That this was wholly without foundation may be easily understood when we take into consideration that the land was 150 miles distant through an almost unbroken and trackless wilderness from the land office, where the lands were entered. It is also contended by counsel below that the lands in question were covered with tamarack and spruce, the soil spongy red clay, saturated with water, and unfit for agricultural use or habitation, and that it was absurd on the part of complainant to place them under the preemption law, and served to put a premium upon fraud. Assuming the facts to be as stated, the conclusion drawn by counsel there is exactly the opposite of the true one. The more unsuitable the lands, the stronger becomes the presumption against the good faith of the settler and the more necessary it was that clear proofs, truthful in character, should be made. The sale of public lands is

within the control of Congress and the President, and they can not be expected to know the character of all the lands in the public domain.

PROOFS AS TO PREEMPTIONS IN 1855.

Israel Johnson, one of the preemptors of that year, testified (pp. 90–97):

> I am a native of Sweden and came to the United States in 1854. It would be pretty hard telling who first spoke to me about preempting land in Douglas County, Wis. I guess Mr. Stinson and John Johnson. They spoke to me on the road between my home and Taylors Falls. They were in a wagon, I think. They were together. They offered me so much to preempt land for them; that is all I recollect of what was said. Their offer was, if I would go up there and preempt land they pay me $30 a month and some for my claim beside. I say I should go, and I did go. Some is dead that went with me, Wallmark and his brother, Swen Peterson, Gustav Vieborg, August Johnson, and another fellow, his name is Westling; that is all I recollect. We took one claim apiece. We went up together and down together. I built a little shanty there. I don't know what claim it was. I couldn't read English, and he put my name to what he had a mind to. John Johnson showed me what claim to take up. The way we know where to go, we had this Johnson to lead us and show us the land. They said we should follow him when I talked with him and Stinson on the road. I was to have nothing else to do with it. And I did follow

him. He showed us where we should work, those along in the company. I cleared a little place and built a little shanty, nothing more. I stayed in it a single night. Then I went to another place and worked there. We worked on one claim, and moved on to another and helped each other put up the houses. After that I went home, right back.

We stayed home one day and went over to Hudson the next day, and made out papers, the whole company. John Johnson was with us the whole time. We was in office, like here, but I don't know who made the papers out. I signed papers there. I guess the others did, too. I paid no money. Somebody, I suppose Stinson or Johnson, paid the money; I couldn't tell. I know I got some money. I signed a form of deed, but I could not read English and don't know what I did sign. I understood it was a deed to Stinson. All these men that went up to Douglas County with me did the same as I did on their claims. The money I was to get was paid to me at Hudson when I signed the papers. I did not pay for the land. I can't tell just how much I got, but it was $30 a month and so much for the preemption.

After this witness had been examined, cross-examined, and excused, and after an intermission had been taken for dinner, he was recalled by the defense for further cross-examination, and stated that he thought he was mistaken about John Johnson going up to Superior with them. Being asked to explain, he said that Otto Wallmark and one Gustav Johnson came to him during the intermission and said he was wrong and that he now

thought it was Vieborg that showed them the road (it is understood Vieborg was known then as Gustav Johnson and was one of the preemptors); but that he was even now not sure John Johnson was not with them, and only *said he was mistaken* because Wallmark, who was one of the party, said so.

We call attention to the fact that Wallmark himself, who was a witness for the defense, testified there were *six* Swedes in the party, the name of one of whom he had forgotten (pp. 208, 209), and to the further fact that John Johnson was certainly with them when they proved up on June 22, 1855, the same as with the band of 1854, as furnishing strong presumptive evidence that the witness was correct in his first statement and Wallmark in error. However this may be, the statement stands unshaken that John Johnson and Stinson hired him to preempt land, and if some other Johnson took charge of the party it is not of special importance. Whoever the pilot was, he was evidently competent and trusty, as he brought the vessel and cargo safely into port, and Stinson got what he bargained for.

We reserve comment upon Wallmark's interference until we take up his evidence later.

Moses S. Gibson, the same man who was hunted up by Stinson in the fall of 1854, and brought back from St. Croix Lake to take the acknowledgements of deeds of the preemptors in the first party, identified the declaratory statements, preemption proofs, and preemption affidavits of this second party, all bearing date

June 22, 1855, as in his handwriting, and says he was employed and paid for the work, as before, by Stinson. The deeds from the entire party to Stinson bear date the same day, and all are acknowledged before this witness.

Note that they each claimed to have begun their settlement on June 11, 1855, just eleven days before the entry, showing that Israel Johnson's story of what was done up there must be substantially correct.

John S. Moffatt, who was in 1855 a clerk in the register's office at Hudson, testified (pp. 133–139) that in the year 1855 he saw James Stinson at the office with a number of Swedes; that Stinson was in the office while the preemption proofs were being made out; that then the whole party went down to the receiver's office, and after their return to the office where witness was he saw Stinson handing the men something which he supposed to be money, and that this happened on two different occasions in that year. (N. B.—Some of the entries by 1854 preemptors were made June 1, 1855, and all of the party that went up in 1855 with two of the previous year were made June 22, 1855.) He stated further that there were other papers made out at the time and acknowledged before Mr. Gibson, which he understood to be deeds to Stinson, and that this circumstance was so unusual that it enabled him to remember the incident. He recollected the name of Wallmark and Johnson, but was not certain of any others.

John Lonquist, who was of the party which went up in 1854, but who proved up on June 22, 1855, under name of John Johnson, corroborates Moffatt as to Stinson being in the office while the proofs were being made and adds the interesting fact that when he arrived at the land office Stinson was outside talking with the Wallmarks, and that they all went in together.

Ambrose B. Burbank, of New York City, testified (pp. 80–87), that he was at Superior in 1855, and that in the month of July of that year (only a month after this band of Swedes claimed to have settled on the lands preempted by them) he went all over lots 1, 2, and 3, in section 1, T. 48, R. 14, the claim of Gustav Johnson, and found nothing upon it worthy the name of improvements, only a few poles thrown together, which would not take a man more than two or three hours to do; that he went on the land himself and made valuable improvements and continued there three years, during which he never saw Johnson nor could he find anyone who had ever known such a man in that locality; that for some reason which he could not understand, but which he assigned to collusion between Stinson and a Mr. Dean, then a United States land officer, he never was allowed to prove up on the claim; that at one time while hoeing potatoes on his claim he was visited by James Stinson and his father, and later received a proposition from a third party claiming to be an agent of Stinson, offering him $1,500 to sell out or abandon his claim; that having become disgusted with the action of the

land officials he accepted the proposal, received an obligation from Stinson for $1,500, to be paid when a patent was obtained for the land; that he went back to New York and after the war surrendered this obligation on receipt of $500, paid by Stinson's check on a New York City bank.

Urgelle Gouge, whose testimony has already been alluded to, in December, 1855, examined, besides the claim of Aaron Peterson preempted in 1854, the N. E. ¼ of section 5, preempted by Israel Johnson; the NW. ¼ of section 4, preempted by Andrew Wallmark; and the NE. ¼ of section 4, preempted by Ola Westerland. He had three companions with him and they went all over the four quarter sections, taking several days for it, and examined them thoroughly. The only visible trace of improvement found on any of the claims (though only six months had elapsed since the proofs were filed showing good comfortable houses erected on each) was a hut such as a hunter might build for the purpose of concealment, standing on the Westerland claim. It was about 8 feet square, 3 or 4 feet high, made of logs not matched or fitted, but laid upon each other with cracks open, and three or four poles on the roof covered with brush. Mr. Gouge says it was not fit to live in, no more shelter in fact than it was outside. There was no sign of any clearing on any of the quarter sections. They were looking for land to locate upon, and had no occasion to take occupied land, as there was plenty of vacant land in the vicinity. Finding these parcels vacant and unimproved, they each

settled on one, erected good houses and lived there for several years. Like Burbank, they found difficulty in proving up, but they did not fare so well as he. One day in the absence of the occupants at their work, all four houses were mysteriously destroyed by fire, and they became discouraged and abandoned the claims.

The foregoing is the evidence for the Government. For the defense but one witness was sworn, a statement of whose testimony follows:

Otto Wallmark, one of the preemptors, gives as the reason why he went to Superior that the Swedish consul in Chicago had recommended the place as one where there was plenty of work, and which was likely to be quite a town (p. 207). This was the year previous, and he decided at the time to go to Minnesota. But the land in Minnesota was poor, and so he determined to go up to Superior, where plenty of work was to be had, at good wages, and he could live on his land and improve it while at the same time earning money (p. 219).

These reasons are evidently given to forestall any suspicion that he was *hired* to go to Superior. As to their honesty, let his conduct be the test.

He says his party went up with a view to enter land *if they found it as good as they expected* (p. 210). Yet there was no deliberation in the selection of the land. He claims they had a map and that as soon as they came in sight of the lake they struck a camp, looked around for a township corner, and entered at once upon their claims.

We submit that is a most improbable story. Here was a band of recent emigrants from Sweden in a country absolutely unknown to them, more than 150 miles from home in a dense forest, and without going into the town, or making any inquiry as to where the best lands were to be found, or taking any time to look around, the witness would have us believe that after having come all that way to find homes and work they settled at once on coming in sight of their destination upon the lands nearest at hand. Such a story *can not be true*, but the statement of Israel Johnson that Stinson had furnished them a leader and guide who pointed out the lands they were to preempt is the only reasonable explanation of their conduct.

Having entered upon their claims, Wallmark says they each proceeded to clear a little piece of land, build a shanty, put a little fence around it, and "hoe in corn and potatoes" (p. 211); they acted always as a party; shifted about in the matter of sleeping; all made improvements alike; as he tersely expresses it, "we didn't do anything separate" (p. 221). He says the shanty wasn't very big, 8 by 6, or something like that, with a roof of poles, and openings cut for a door and window (p. 221). He had in mind that it was *temporary merely*, and *did not intend to do any more than was required to get his entry* (pp. 222–224). He ran a little fence around his clearing, not because any was needed, but because he thought it was *required* (p. 225). The others of the party made improvements of the same character, little log houses with door and

window openings and size about the same, no doors in the openings, no sash in the windows (p. 224).

Note now what this witness swore to at the time in support of his neighbor, Gustav Johnson's preemption on lots 1, 2, and 3, section 1 (affidavit at page 48 of record), namely, that said Gustav Johnson *moved into* the house about June 1, and has continued to occupy it till the present time; that it was *14 by 14 feet on the ground*, with *roof, chimney, door, and a comfortable residence* for himself; also that he had *cleared two acres* of land ready for cultivation. And remember at the same time that this is the *identical claim* on which the witness Burbank settled about *July 1 of the same year*, and found exactly such a hut as Israel Johnson described and no clearing or other vestige of improvement. His own present statement and the evidence of Burbank and Gouge show that he did not scruple to impose upon the Government by a grossly deceptive and fraudulent affidavit. Having since attained some prominence among his countrymen it is not surprising that he should want to defeat this action, the success of which would discredit him, and that we find him appearing as a witness for the defense, and that we also find him an interested participant and interpreter on the two occasions when Lorenz Johnson has been examined regarding these preemptions, and again a hanger-on and interfering at the examination of Israel Johnson, trying to induce him to retract a statement in his testimony.

Wallmark further says that he was not disappointed in the object of his trip; that his claim was a good

one and he was entirely satisfied with it; that work was plenty there and wages good (pp. 223 and 230), yet though he claimed these were the very things he and his companions came so far to seek, they *did no work whatever there* (p. 220), but after spending at the outside three or four days on their claims (he *says* two or three weeks, p. 211, but as the preemption proofs give date of settlement as June 11, and proofs were sworn to in Hudson, June 22, and he had spent a day or two at home in Chisago on the way down, p. 211, it is readily seen that this was impossible), as soon as these imaginary houses were completed they turned their backs on Superior and have never visited it since. Indeed, so secret and silent was their passing that as shown by Burbank and Gouge, they were *not even known to have been there.*

Wallmark declares that he had not seen or heard of Stinson until after he had entered his land, which he claims to have paid for with his own money, and which, with painful disingenuousness, he says, in his direct examination (p. 213), he sold "sometime after," he didn't know how long, to Stinson, admitting, however, on cross-examination, that it was *on the same day and right there in Hudson, near the land office* (p. 227).

Compare with this the testimony of Lonquist, that he found Wallmark and Stinson talking together outside the land office when he arrived, and that they all went in together and were sworn; the testimony of Moffatt that Stinson came in with the men and remained while the proofs were being made out, that

they all went together to the receiver's office, and coming back signed what he supposed to be deeds, and received money from Stinson; and the testimony of Gibson, admitted by Stinson, that he was hired and paid by Stinson to make out both the preemption proofs and deeds, and the conclusion is inevitable that this witness is dissembling.

He was obliged to swear in his preemption affidavit that he had not settled on it to sell on speculation, but to appropriate it to his own exclusive use, and in his testimony he protested more than once that he intended to return and make *real* improvements upon the land, yet he admits that almost before the ink was dry upon his signature to that oath he conveyed to Stinson this home he had traveled so far and spent probably a month of time to obtain, at an advance of less than $100 over the Government price, *and without knowing or making any inquiry as to its value* (p. 229).

He says he received "about $100." His claim embraced 148.78 acres, which would cost him about $178.50. The deed to Stinson states the consideration as $270, which is an advance of $91.50, a mere pittance in comparison with the advantages he had secured. It is also an admitted fact that he went back to Chisago County and has always since resided there, yet the land was *just as poor* as when he left the region to avail himself of the superior advantages of Douglas County, and land and work were still plenty and wages good in Superior, where he claims his expectations had been realized. The fact is, the story of this witness is improbable throughout; his conduct is utterly at vari-

ance with his protestations, and his testimony, in so far as he disputes the charges in the bill of complaint, is opposed, discredited, and overwhelmingly refuted by that of the *six* witnesses, Israel Johnson, Burbank, Gouge, Moffatt, Gibson, and Lonquist.

Right here we may as well refer to the claim made that Lorenz Johnson, who testified for the Government in respect to the preemptions of 1854, had made inconsistent statements in his deposition, taken in 1893, in a certain action pending in the United States circuit court for the western district of Wisconsin, wherein one Gagnelius, grantee of Andrew Swenson, was plaintiff and James Stinson was defendant. The action was ejectment for the quarter section preempted by Swenson. The pleadings are in the record. It has never been brought to trial. Counsel for both parties in that action are counsel for Stinson in this litigation. It will be seen that what Lorenz Johnson did in the matter of his own preemption was utterly foreign to that controversy, but evidently counsel saw in it a good opportunity to examine this illiterate Swede, in the absence of counsel for the United States. It will be observed upon perusal of the deposition, found at pages 340–342 of the record, that *not a single question material to the case in which he was called as a witness* was asked him, because the only issue could be whether Gagnelius or Stinson had the better title from Swenson. The linguistic capacity of the witness may be judged by the fact that although he had then been forty years in this country he had not yet learned to converse in English. The interpreter was this same

Otto Wallmark, whose conduct and testimony we have just been considering and whose reasons for wanting this fraud covered up we have already adverted to. When the witness was allowed, on direct examination, to tell his own story in his own way, he stated that he *had always lived in Chisago County* since he came to this country, and that in 1854 he went up to Superior to work by the month, and that after the party had worked awhile clearing the streets *Stinson took them out one at a time on the land*, and that he took land with the rest. He was not asked to state who hired him or what was said to him, and when he had gone thus far his direct examination was cut short. Then the astute counsel for Stinson took him in hand, and here is where the alleged inconsistent statements are found. The deposition does not give question and answer, but is taken in narrative form. It was said, however, that the substance of the examination on pp. 341–342, on which counsel rely to contradict this witness, *was contained in the questions* and that the answers were a simple *affirmative or negative*. Thus the questions would be: "If the paper you signed at the land office stated that you never had made any other preemption," etc. "If it was contained in the paper that you did not enter upon the land to sell it on speculation," etc. "If the paper stated that you had not prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title you might acquire from the United States should inure in whole or in part for the benefit

of any person except yourself"—*was it true?* and the answer was merely "Yes." Then the substance of the same questions would be repeated in the direct form, and the answers were simply "No."

It is evident the force of the answers depends entirely on the witness's understanding of these involved questions, dealing, as they do, with abstruse subjects and unfamiliar ideas and words, and that again depends on his intellectual keenness and the ability and trustworthiness of the interpreter. Counsel, in their effort to prove that the testimony as to conversations between Stinson and the preemptors was unreliable because held through an interpreter, asserted that a single word misinterpreted might change the entire meaning of what was said. We have shown the reasons why this argument did not apply to those conversations. But here the case is different. The interpreter was one of the participants in the alleged frauds. He is now a man of position and doubly interested in covering them up, and it is not strange that his answers seem inconsistent with his present testimony *which is a simple recital of what was said to him and what he did.* Who knows how Wallmark interpreted these things to him, or what suggestions he made to the witness as to his answers? When Lorenz Johnson was examined as a witness in the case at bar, he was questioned about this previous deposition given by him, and the interpreter originally sworn *found it impossible to make him comprehend*, and particularly the question about the preemption title inuring to the

benefit of another, and a new interpreter had to be called in. He then stated that he did not understand he had testified, as claimed on the former occasion, and explained, that *he had not preempted the land to sell on speculation, but for a month's wages.* We submit there is no substance to the alleged impeaching testimony.

To sum up the evidence in respect to the 1855 preemption, we have the *positive testimony of one witness*, Israel Johnson, that Stinson personally hired him to preempt land; that he joined a *party* having a leader whose directions he was to follow, and this leader, we believe as he first stated, the same John Johnson who hired and controlled the party of 1854 preemptors; that this leader showed each man where to locate and instructed him what to do; that the witness performed his contract, conveyed the land to Stinson as soon as entered, and received the promised stipend. *It also appears by the undisputed testimony* that this party which he joined *acted as a unit* in all things, as if having a *common purpose*; that they entered upon the land preempted without deliberation or inquiry, as asserted by Israel Johnson; that they made merely temporary and colorable improvements, of like character with those made in 1854, and which had wholly disappeared in most cases within six months; that these improvements were in no sense a compliance with the law, and were grossly misrepresented in the preemption proofs presented at the land office; that as soon as these perfunctory acts were done, without having been

a week in the country, without doing a thing there in the line of their work or occupation, in short, without performing a single act indicative of a permanent settler, not Israel Johnson alone, but the *entire party*, acting still in concert, turned about and went back to Minnesota and were never again seen in Douglas County. Their whole conduct was characteristic of men performing a contract, carrying out the orders of a superior, acting a part in a preconcerted scheme or enterprise.

Then at the land office we find them acting together, meeting on the same date, witnessing for each other and accompanied still by appellee's steersman, John Johnson, Stinson, whose interests were in Superior and whose home in St. Paul, who had not personally seen these men in Superior, nor been in their company, by something more than a coincidence meeting with them there, *at the very time we would naturally expect the principal to appear*, associating familiarly with them at the land office, employing a conveyancer to make their proofs, and himself paying for the service, going with them to the receiver's department and advancing the money for at least part of them to pay for the land, and finally the consummation of the deal, by the immediate conveyance of the land to Stinson.

It is said there is no *direct evidence* of the hiring of any of these men, except Israel Johnson, but it must be remembered that in cases of fraud, combination, or conspiracy it is seldom that direct evidence is procurable; the combination must nearly always be shown

by circumstances, by proof of concerted *action*, and here these are so numerous, unequivocal, and strong that the conclusion unerringly follows.

Again, it is said there are others of the preemptors of 1855 still living, and as the Government has not seen fit to examine all accessible witnesses, the presumption is against the complainant upon this charge that the preemptions were made under contract, and the case of *United States* v. *Budd* (144 U. S., 155) is cited in support of the proposition.

We respectfully submit that no such presumption is warranted, and the case cited does not support it. In the Budd case the court say, "*No witness ever knew or heard of any agreement.*" Then Budd and Montgomery, the two persons charged with making the prior agreement were both parties defendant, and both answered under oath denying the truth of the charge. It was claimed that because neither of them appeared as a witness, and because *they* failed to call White and Rockwell, the witnesses to the preemption applications, and the notary who took the acknowledgments of the deeds, therefore the presumption was *against the defendants* because they had failed to fully disclose all the facts within their knowledge. The court said:

> *As no wrong is charged against the three latter* (referring to White and Rockwell and the notary), if the Government, the complaining party, failed to call them, it is to be presumed that upon inquiry it found they knew nothing which would tend to substantiate the claim. As to the two defendants, they having once sworn

> there was no agreement, there was nothing further to disclose. If the Government doubted their statements under oath, it could have called either one and cross-examined him to its satisfaction.

It will thus be seen that all this case *held* was that no presumption arose *against the defense* for not calling witnesses which the complainant could call *with equal propriety*, nor because they did not offer themselves as witnesses when they had made sworn answers which were evidence, and the complainant had not seen fit to cross-examine them.

The case certainly did not hold, nor would it be just to hold, that an unfavorable presumption should be drawn from the fact that the United States failed to call *all of the alleged participants in the fraud* to prove its case. These men not being parties to the action, the United States by calling them would have vouched for their credibility, and the natural presumption is that a man who has once assisted in a fraudulent scheme will not tell of it or help to defeat it. The United States would have been foolish to call them, unless it had proof in advance of their repentance and willingness to tell the truth.

The complainant gave evidence as to the kind of house found on Ole Westerland's claim by Urgelle Gouge, also of the condition of Gustav Johnson's claim by A. B. Burbank. Mr. Sanborn, counsel for defendants, on his cross-examination of Judge Shaleen (p. 352) showed that for three years past Andrew Wallmark's hearing, sight, and memory had been impaired, which explains

the failure to call him as a witness, but the same counsel called the judge's attention to a number of affidavits attached to that of Peter Norell and furnished to the Government by one Streeter in 1887 (p. 352), among which he identified one by Andrew Wallmark (p. 353), and it may be inferred he had given testimony therein not unfavorable to the Government. It may be stated here that the Government, with unusual courtesy, furnished a copy of these affidavits to the counsel for defense early in this litigation.

The defense could have called all of the competent living preemptors, and as they were alleged to be the *active agents* in the fraud, and acting in collusion with and under the control of Stinson, the United States *could not* be expected to do so. As defendants did not see fit to call them, *there is a presumption* that they could not contradict the testimony given by the witnesses for the complainant or that the defense were afraid of what they might disclose on cross-examination, and this is plainly implied in the opinion in the Budd case. Naturally they would be friendly toward Stinson, and hostile to the other side, hence the presumption, such as it is, is against the former.

If the evidence of a preexisting agreement is not as direct and positive in the case of these 1855 preemptors as in the case of those who went up in 1854, we submit it is sufficiently clear and convincing to answer every requirement of equity, while the proof of bad faith in the matter of "settlement and improvement" is *absolutely conclusive.*

It is urged that the preemptors have had the benefit of their preemptions, and that Stinson paid all the land was worth, therefore the patent should be permitted to stand. We say in reply:

(1) The very essence of the action is that the preemptors were never *entitled* to the preemptions, which the law reserved to *bona fide* settlers on the public lands and to those only. It might as well be said that because a "fence" has paid the thief a reasonable price for his booty, both should go scot free, and the owner should not have his own.

(2) It is not true that there was no speculation in these investments for Stinson. James Bardon, who has been in the country since 1857, testifies that during the entire period from that time down to 1881 the lands were worth from $5 to $25 per acre, depending on location. The least valuable were therefore worth $800 per quarter section, and as the highest consideration stated in any of the deeds is $270, there is seen to be a very fair profit in these deals. If it were not so, we may be sure Stinson would not have exhibited the eagerness, and taken the trouble to get them, which the evidence shows he did. Again, it may fairly be inferred, and in fact the evidence justifies the belief, that the consideration stated in the deeds covers *all* the money paid the men, including that paid for time employed in the city work at Superior, for which he was doubtless reimbursed in part by his associates. Stinson claimed to be acting as agent for them in hiring these men and for his father in buying the land. If so,

he must have made reports to his principals and they must have a record of the sums expended. As he failed to produce this evidence, the presumption is the men told the truth, and that they never received the sums stated in the deeds exclusive of the wages promised them and part of which they earned by street work.

(3) Even if James Stinson paid full value for the land, that would not justify his getting it by fraudulent means, and is therefore entirely aside from the question. The law declares that the title so obtained shall be void and the money paid for it forfeited. The argument is an appeal to the court to set aside the law, and nothing else, and this, it is safe to presume, the court will not do.

Again, it is said the United States had knowledge of the alleged frauds as early as 1856, in proof of which the defense call attention to certain notices of contests published in the local papers at Superior and certain letters written by Hiram Hayes to the General Land Office, for which reason also they say relief should be denied.

(1) These publications are not notice to the United States, nor is there any proof that one of them was ever filed in the Land Department or seen by a Government official.

(2) The patents were most of them issued before these notices were published, and after patent issued, the Department has no jurisdiction and can afford no remedy. It is not claimed that any hearing was ever had on any of the contests or any evidence of fraud

presented. Burbank was bought off, Castro killed in a duel, the other contestants were burned out and disheartened, and Hayes says that as soon as he learned that patents were issued he dropped the matter. The United States Land Department which is a mere administrator of the law, might well suppose that if the contestants abandoned their claims they were unfounded.

(3) Neither the published notices nor the letters of Hayes gave information as to the grounds upon which the claims were contested, except that one letter charges that some of the preemptors had previously exercised the preemption right in Minnesota. To this the Commissioner replied that the land in Minnesota was open to private entry, and that a filing of preemption application on such lands, was no bar to a second filing on unoffered lands. No other specific fraud is referred to, and this proved to be in fact no fraud. It is elementary that notice to bar one of relief must be of the particular fraud charged, even in the case of a private individual. And there is no evidence that any official of the Government prior to 1885 had knowledge that it was claimed that these preemptors had been hired by Stinson or that they were not actually living on the land.

(4) Even if the Government officials had notice of the precise frauds here charged, it would be no defense to the actions. Cases have not been infrequent where the land officers were *in collusion* with parties engaged in defrauding the Government; and even if perfectly

honest they are not apt to take the initiative or to follow up a prosecution which has no private interest back of it to spur them on. For these reasons, it has become a well-settled rule that laches and limitations can not be pleaded against the United States in its sovereign capacity, and the authorities to that effect will be found collated in this brief.

(5) It is shown by the proofs that the judicial department of the Government, which alone had the power to enforce a remedy against the fraudulent grantees of these lands, was first notified of the frauds set forth in the bill of complaint through a report of Special Agent Eaton made to the Commissioner of the General Land Office and by him transmitted to the Attorney-General in 1885.

PRIOR AGREEMENT TO CONVEY PREEMPTION CLAIM RENDERS PATENT VOID.

Section 2262, Revised Statutes, is as follows:

> SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the receiver or register of the land district in which the land is situated that he has never had the benefit of any right of preemption under section twenty-two hundred and fifty-nine; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made

any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself; and if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers for a valuable consideration, shall be null and void, except as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

NOT NECESSARY TO REFUND MONEY OR OFFER TO REFUND MONEY.

Inasmuch as section 2262, Revised Statutes, provides that any person swearing falsely to procure a patent shall forfeit money paid by him for the land, the United States need not offer to refund the money when it brings an action to vacate the patent on that ground.

United States v. *Minor*, 114 U. S., 233.
Cooke v. *Blakeley*, 50 Pac., 981.
United States v. *Trinidad Coal and Coking Co.*, 137 U. S., 161 (34 L. Ed., 640).

TAXES.

It is a well-settled rule that public lands of the United States are not subject to taxation. The fact that a person may have procured a conveyance of the legal title from the Government, whether by mistake, fraud, or false swearing, does not alter the rule. The title so obtained, in the eye of the law, is held by the fraudulent grantee *in trust for the grantor*—that is, the United States. In other words, it is still in fact, not only as between the parties but as to all the world excepting bona fide purchasers, the property of the United States, and as such must continue exempt from taxation.

Van Brooklin v. *Anderson*, 117 U. S., 151.
Wisconsin Central R. R. Co. v. *Price County*, 133 U. S., 496.
Northern Pacific R. R. Co. v. *Rockne*, 115 U. S., 600.
Central Pacific R. R. Co. v. *Nevada*, 162 U. S., 512.
Hussman v. *Durham*, 165 U. S., 144 (41 L. Ed., 664).

Original entry canceled. Land held exempt till valid entry made. (*Campbell* v. *Wade*, 132 U. S., 34.)

STATUS OF LAND AFTER PATENT VACATED.

The land included within the alleged fraudulent entries, being situate within the corporate limits of the city of Superior, is not now subject to preemption or homestead entry, but in case the patents shall be set aside it will be subject to sale upon such

terms and under such regulations as Congress may see fit to prescribe.

Upon this point we quote section 2258, Revised Statutes:

> SEC. 2258. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of preemption, to wit:
>
> First. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.
>
> Second. Lands included within the limits of any incorporated town, or selected as the site of a city or town..
>
> Third. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.
>
> Fourth. Lands on which are situated any known salines or mines.

See also statute relating to sale of town sites, section 2380 et seq., Revised Statutes.

The answer states that this suit was instituted in the interest of parties who desired to obtain the land through the Government by preemption if the patents are set aside, and who are charged to have filed claims upon it. There is nothing in this claim.

LACHES AS A DEFENSE.

During the period of time involved in the subject-matter of this case the management, control, and sale of the public lands have of necessity been of a constantly changing character. Its legal department, in

its relations to the other departments, as well as in its organization and evolution, has been equally changing, and it would be idle to attempt to say that the United States could be held to rules, either in law or equity, which would be proper in the case of individual litigants, copartnerships, or private corporations. The fact that there has been no statute of limitations running against the Government until a recent period, and that the courts have almost uniformly refused to apply rules relating to *notice* to the Government, so as to hold it responsible for laches, is apparent from a large number of cases. If it were otherwise, notice brought to officials of any department of the Government might be binding upon the heads of an entirely different department, thousands of miles distant and beyond any reasonable reach.

It is well known that contests over preemption and homestead entries between rival settlers or speculators were of the most common character all over the United States, and are to this day. Where a party sought to contest the entry of another party with intent to obtain the land for himself, it was necessary to make some sort of showing of good faith in so doing by means of affidavits. That was all that was done here, and there was nothing in that showing, as indicated by this record, to justify defendants' sweeping and general charge, inferentially applicable to this whole fraud, that the Commissioner of the General Land Office was informed of the same, relating to these preemptions soon after they were made, but deliberately chose to wait until

most of the witnesses were dead and the memory of the living had failed. It would scarcely be possible to adopt language more directly contrary to the real facts in this case. Nor is the claim made by defendant's counsel, that most of the witnesses are dead and that the memory of the living has failed, less in accord with the facts in this case.

The delay was not great or unreasonable. The fraud was discovered in 1885, as disclosed by this record. Suit was begun in 1887, within two years of the discovery. The record shows that the subject was meanwhile being carefully investigated with a view to ascertain whether, after the lapse of so long a time before the discovery of the fraud, proof could be clearly and reliably made. The only witness of any particular moment who had died was John Johnson, and he had passed away within about two years of the commission of the fraud, so that if the same had been discovered almost immediately upon its perpetration, and had been acted upon, his testimony could not have been saved to the defendant. Can it be for that reason that the Government would have no redress? True, as they claim, the register and receiver of the land office at the time of the occurrence had died, but their records and files are here in this case, and common knowledge of the land office and of land office proceedings would satisfy any court that they merely gave attention to and made files and records of their enormous business from day to day. Those files and records are clear, unmistakable, beyond the chance

of dispute, and in evidence in this case. What rule of the law will, under such circumstances, presume the loss of papers, and why can not a court be reasonably clear as to the reliability of the evidence?

In their brief below, defendants quote from the somewhat sweeping but eloquent language of Judge Black in the Reside matter. That party had extensive dealings with the Post-Office Department of the Government at a time when the latter was impecunious and in sore stress for means to carry on its business. The series of transactions in which the two were involved had been submitted to a court and jury and had been determined by them in the form of a judgment in favor of Reside. Congress had passed an act expressly recognizing the validity of that judgment and ordering its payment. Then the Secretary of the Treasury presumed to set off old balances—the same matters that had been in dispute and had been settled in the litigation which had ended in the judgment before mentioned—as against the claim of Reside's heirs for the payment Congress had ordered In other words, the Secretary of the Treasury, by an arbitrary proceeding, was seeking to upset the action of a jury, a court, and Congress, the latter of which had absolute control over the subject. He was seeking to open a matter which had become *res judicata;* to deny to a man's legal representatives their day in court; to constitute himself court and jury; and to summarily interpose his authority as final and decisive in favor of old balances struck against the other

party by persons who had passed out of the office and were dead, and against the heirs of a man who was also dead. It would be difficult to imagine a case that would more thoroughly arouse the opposition of a learned and fair-minded man like Attorney-General Black than the facts in this Reside matter. Had he been rendering an opinion upon the circumstances of a case like this, where an alien had entered the boundaries of the United States and by hoodwinking and deceiving had deliberately set the laws at defiance, had violated every one of them, and had obtained a good record title to lands which belonged to the United States and for which it had received no penny of compensation and no other consideration whatever. The alien was still living and in possession of all of his faculties and of the property he had thus secured by fraud, and in the enjoyment and prospective further enjoyment of that property within the boundaries of a great and growing city, to the exclusion, perhaps, of thousands of people who might have found homes thereon—people innocent of fraud and who were loyal and law-abiding citizens of the United States—it is not unlikely that his opinion would have been other than that quoted by the learned counsel.

But the case of *The People* v. *Clark* (10 Barb., 120) is even less happy for defendants. A moment's analysis of that quotation is sufficient. Clark, while lieutenant-governor of New York, under the British Crown, it was claimed, became interested, among

others, in a grant of certain lands from the Crown. One hundred and ten years afterwards it was sought to overturn the grant, although other persons had long since become the owners. But it appeared that, even if Clark was interested, the grant reserved to the Crown the usual rents and profits required in such cases from the grantee. In other words, if Clark had been interested he had submitted to a like payment as the other parties interested, or as other persons in like cases. The Crown was not, therefore, in any possible sense defrauded. The King had passed away, the colonial council had passed away from New York, and Clark had long been gathered to his fathers; in fact, no one connected with the transaction could have been dead less than fifty years, and innocent holders of the land in good faith were sought to be dispossessed for this reason, almost technical if it had been raised immediately upon its occurrence. In the case before us the ignorant preemptors had never paid a cent. On the contrary, they had received pay for what they ignorantly did as common laborers, or little better. Stinson had patented land directly in violation of law by false and fraudulent affidavits, none the less false and fraudulent, so far as he was concerned, though the parties purporting to make them had done so ignorantly. He had obtained these lands for purely speculative purposes. He held it, costing him but a trifle, until it had come to be worth a large amount of money, when the fraud was discovered. The records were complete. The files were perfect. The witnesses, who

had meanwhile become intelligent, were living and some of them appeared in court to expose and make plain the fraud, and Stinson himself, still owning the land, did not and could not deny it in its most essential features. There is nothing similar between the two cases of *The People* v. *Clark* and *United States* v. *Stinson* except that a grant or conveyance was sought to be canceled in each.

The case of *Mayor of Hull* v. *Horner* (Cowper's Rep., 110) was also cited below. There one hundred years had elapsed, and, though he refused to hold that one hundred years was a positive bar because there was no statute of limitations against the Crown, yet he properly held that, as the revolution had occurred, and the Government had changed, and everybody was dead who had any connection with the inception of the claim or right in the parties through whom the defendant held, the grant could not be disturbed. No one can dispute such doctrine or its wisdom, but it simply does not apply to this case. There is no claim of right of a previous grantee of the United States through whom Stinson holds. It is a grievous error, constantly made by counsel for the defendants, that they assume that everybody is dead in connection with this case.

They also cited the case of *Clark* v. *Boorman* (18 Wall., 493), in which they say Judge Miller states the rule of repose in vigorous language, which they quote. We beg leave to quote, for the convenience of the

court, paragraphs 4 and 6 of the syllabi of that case, and ask a comparison with the facts in this case:

> 4. Where a party in interest in his lifetime had notice of all the facts which constitute the ground of fraud alleged in the bill, and for eight years that he lived after the cause of action accrued to him, with notice of his rights and of the whole transaction, brought no suit nor set up any claim, his heirs are not entitled to the benefit of this exemption from the bar of the statute on the ground of recent discovery of fraud.
>
> 6. The general doctrine of courts of equity concerning lapse of time, laches, and stale claims will protect the executors of a trustee sued after his death for matters growing out of the trust which occurred forty years before suit was brought, which were known to the ancestor under whom the plaintiffs claim for over twenty years before his death, and where the suit is brought by those heirs fourteen years after *his* death, and two years after the death of the trustee, and where no person connected with the transactions complained of remains alive.

The rule of repose for the benefit of society and the intelligent administration of justice, most humanly and wisely invoked under such circumstances as obtained in that case, can never be read to protect a living fraud and a living defrauder caught with the results of his fraud squarely in his possession. The repose of society and the intelligent administration of justice at the hands of a court of equity put forth as strong a claim for the overturning of a fraud and the righting of a wrong as

it does for a cessation of litigation at the proper time and under proper circumstances.

Still more unhappily cited than the case last examined is that of *The United States* v. *Moore* (12 How., 222). There a party had purchased land before the United States came into the possession of it from an officer of the Crown who had not the authority to receive the purchase money or to convey title. By the regulations connected with such purchase the purchase was bound to build mounds and levees and to clear and ditch the front of his land to the depth of 2 arpents such land being along the Mississippi River, and this must be done within three years from the date of their purchase, otherwise the land would revert to the King. There was no attempt to fulfill these conditions, and the alleged purchaser asserted no right from 1797 to 1835, a period of thirty-eight years, whereupon the court held that it was presumed that he had surrendered his attempted purchase and had his money refunded. The language of the court under such circumstances, eminently proper, simply has no application to this case.

The celebrated case of *The United States* v. *Arredondo* (6 Pet., 746), was also cited. The court there refused to overturn an ancient grant, fully protected by the treaty of 1819, by which we purchased Florida from Spain. We do not deny the doctrine quoted to be expressly and particularly applicable to the case quoted by counsel. No startling innovation upon the ordinary rules or settled principles of equity jurispru-

dence is invoked by counsel for the United States in this case.

Counsel below quoted from the decision of Mr. Justice Field in the case of *United States* v. *Flint* (4 Sawyer, 58). We subscribe most heartily and earnestly to the whole of the first paragraph and as much of the second as is applicable to the facts under consideration. We claim that, with all the facility in our power, the truth was ascertained when the fraud was first discovered and has been made the basis of the Government's action in court; that there has been no unreasonable lapse of time; no change in the condition of the parties; no shifting of the property barring a relief without injury to third parties who have any rights whatever. In that case the United States sought to open a decree after it had stood for eighteen years. After the party who would be considered to be in the same place as Stinson here had died, third parties had acquired his interest and made valuable and extensive improvements, and the court properly held that to attempt to open the decree after such unnecessary delay and intervention of innocent third parties was against public policy.

In *Maxwell* v. *Kennedy* (8 How., 221), a case between private parties, it was held that the lapse of forty-six years was a bar to relief in equity, although the creditor supposed his debtor to be insolvent and not worth pursuing, where it appeared that for a considerable part of the time the debtor was in a condition to pay and the creditor might, by reasonable

diligence, have discovered it and recovered the money by a suit at law. As before seen, less than two years elapsed from the time of the discovery of the fraud in our case and the commencement of suit, and no time was lost by the Government officials in making the necessary investigation to enable the suit to be intelligently brought. The failure to use reasonable diligence is always discountenanced in law and in equity. With its vast domain, it can not be said that the Government of the United States failed in diligence as the creditor in that case did, because it would have been necessary to have gone all over the patents issued by the Government throughout its vast domain and to have examined the facts and circumstances connected with the issuing of each one in order to have this case on a parallel with the one cited by counsel. There the creditor knew his debtor and had full knowledge of his claim. Instead of watching him closely—in other words, using due diligence—he simply let him go, when for a considerable portion of the time, by an action at law, he might have recovered his debt. Under such circumstances he invoked the aid of a court of equity. No such knowledge can be imputed to the officers of the Government in this case. The cases are utterly unlike in every respect, except the mere lapse of time between the commission of the fraud and its discovery, which, in our case, was many years less than in that.

The case of *Brown* v. *The County of Buena Vista* (95 U. S., 160) contains merely the expression of a

common and general doctrine. It holds that each particular case is to be adjudged upon its own merits as to laches. If, in the exercise of a reasonable discretion, the court is satisfied that there is laches, it will recognize that defense, otherwise not.

The defendants suggested below that twenty years is the ordinary limit which will be observed by a court of equity as indicating laches. The first case cited is that of *Elmendorf* v. *Taylor* (10 Wheat., 173), a case between private parties, in which the Government was in nowise involved; in which a living party, with full knowledge at all times, had waited twenty-one years before attempting to rid himself of an adverse title. The case is so entirely at variance with the facts in this case, and the holding so unimportant as a guide, it is hardly necessary to give it attention.

The case of *McKnight* v. *Taylor* (1 How., 168) is a matter of accounting. The complaining party, after a lapse of twenty years, saw fit to ask for an accounting, which should have been asked in due season. Certainly twenty years in such a case would be a long time for a court to consider laches.

The case of *Sullivan* v. *Portland Rwy. Co.* (94 U. S., 811) discloses a subject-matter of railroad stock, preferred stock, bonds, mortgages, trustees, stockholders, etc.; in fact, a genuine railroad mix-up. The only light that could possibly be extracted from the case to aid the court in this case is that the court held that there was laches.

Godden v. *Kimmell*, in 99 U. S., 201, was a bill to have satisfied an account against a deceased creditor

where fourteen years had elapsed and nothing had been done, the complainant sleeping upon his rights until all parties were deceased, but, like the others, is of no possible weight or importance as a guide in this case.

Quoting from the case of *The United States* v. *Beebe* (127 U. S., 338):

> The principle that the United States is not bound by any statute of limitations, nor barred by any laches of its officers, however gross, in a suit brought by it as a sovereign government to enforce a public right or to assert a public interest is established past all controversy or doubt.

It is true that in this case, which was one where the Government had loaned its name and authority to enforce rights of private individuals, the Supreme Court held in favor of the defense of laches, but was careful not to do so until it had made the distinction between suits to enforce public rights of its own from suits brought in its name for the benefit of private individuals.

In the case of *The United States* v. *Nash., Chatt. and St. L. Ry. Co.* (118 U. S., 120), which was an action brought in the United States circuit court for the middle district of Tennessee upon coupons owned and held by the United States, where the State statute of limitations was pleaded, it was held that such statutes did not apply, and Mr. Justice Gray made use of the following strong language (p. 125):

> It is settled beyond doubt or controversy upon the foundation of a principle of public

> policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confined, and that the United States, asserting rights vested in them as a sovereign government, was not bound by any statute of limitations unless Congress has clearly manifested its intention that they should be so bound.

In the case of *The United States* v. *The Dalles Military Road Co. et al.* (140 U. S., 599), which came up from the circuit court for Oregon, it is held that the claims of the United States can not be treated as stale claims, nor can the defenses of stale claims and laches be set up against them. That was a suit brought under an act of Congress to provide for proceedings for forfeiture of a grant of lands to the State of Oregon for certain public purposes. One of the defendants in the case set up the defense of laches. In reply to it, Mr. Justice Blatchford says, on page 632:

> An assertion that a claim of the United States is a stale claim is an assertion that Congress deliberately directed suit to be brought upon a stale claim. If laches be a good defense, it must be admitted that Congress directed a suit to be brought which would be defeated by showing prior delays by Congress. Besides, the defenses of stale claim and laches can not be set up against the Government. (Citing a large number of cases from the United States Supreme Court.)

The case of the *San Pedro and Canyon del Agua Co.* v. *The United States* (146 U. S., 120) was an appeal

from the supreme court of New Mexico. This was a case of a Spanish land grant. The third paragraph of the syllabus reads as follows:

> When the Government has a direct pecuniary interest in the subject-matter of the litigation, the defense of stale claim and laches can not be set up as a bar.

In that case Mr. Justice Brewer, on page 135, says:

> The United States has, therefore, a pecuniary interest in maintaining this action, that it may recover possession of these mines and secure to itself the revenue naturally derivable therefrom.
>
> This last matter is also a sufficient answer to the second point made by the appellant, and that is that the prosecution of this suit is barred by laches, for it is well settled that when the Government has a direct pecuniary interest in the subject-matter of the litigation the defenses of stale claim and laches can not be set up as a bar.

The case of *The United States* v. *Insley* (130 U. S., 263) is a most instructive one, showing how far the doctrine of laches, as against the Government, has been excluded by the Supreme Court. Thirteen years after a mortgage had been foreclosed it was held that the United States had a right to redeem from the foreclosure decree.

It was there held by the circuit court for the district of Kansas, from which the case came, that the United States, in such a case, came into court on a level with any private litigant and that the case did not involve any question of governmental right or duty, and,

therefore, the ordinary doctrine of laches in equity should be enforced. In reversing that decision, Mr. Justice Blatchford, delivering the opinion, said:

> In the present case the United States holds title to the property in question as it holds all property, for public purposes and not for private purposes. So holding the title and the right of possession under their deed, it holds in the same manner and for public purposes the incidental right of redemption. In this view the doctrine often laid down and again enforced in *United States* v. *Nashville Railway Co.* applies to this case.

Then, after quoting from the Nashville Railway case and citing a long line of Supreme Court decisions, the learned justice proceeds to say:

> This doctrine is applicable with equal force not only to the question of a statute of limitations in a suit at law, but also to the question of laches in a suit in equity. The principle that the United States are not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right or assert a public interest is established past all controversy or doubt.
>
> It was suggested in the decision of the court below, as a ground for applying to the United States the doctrine of laches, that the Government was not made a party to the foreclosure suit because it could not have been made such party except at its own will, and that it would be a hardship to the other parties to this suit to

> allow the Government to lie by for so many years and then come into a court of equity to assert the rights sought to be maintained in this suit. It is a sufficient answer to this suit to say that the principle we have announced has long been understood to be the rule applicable to the Government, and that it rests with Congress, and not with the courts, to modify or change the rule.

As early as 1832, in the case of *Lindsey* v. *Miller* (6 Pet., 666), in a land controversy, the statute of limitations was sought to be raised against the Government. Mr. Justice McLean used the following language (p. 672):

> It is a well-settled principle that the statute of limitations does not run against a State. If a contrary rule were sanctioned, it would only be necessary for the intruders upon the public land to maintain their possessions until the statute of limitations should run, and then they would be invested with a title against the Government and all persons claiming under it. In this way the public domain would soon be appropriated by adventurers. Indeed, it would be utterly impracticable, by the use of any power within the reach of Congress, to prevent this result. It is only necessary, therefore, to state the case in order to show the wisdom and propriety of the rule that the statute never operates against the Government.

The case of the *United States* v. *The Southern Colorado Coal and Town Co.* (18 Fed., 273), the circuit court of the United States for the district of Colorado, de-

cided in 1883, in many important features, is identical with the case at bar. The opinion is clear, elaborate, and convincing. In that case the names of fictitious persons were used to effect entries as agricultural land of mineral land, notably coal lands near Trinidad. Conveyances were then made, purporting to be made from those straw men, to third parties, who claimed to be bona fide purchasers for value and thus avoid any possible criminal charge. A letter was written from a law office in Trinidad to the Commissioner of the General Land Office, calling his attention to the location of the lands, asserting that they were coal lands, not agricultural, and charging gigantic frauds upon the Government in obtaining them and giving the manner of the fraud. This letter was in evidence in the case, and as many years had elapsed from the time when the letter was written and this suit was commenced, the defense of laches was interposed on the strength of it. The learned judge, in deciding the case for the United States, used the following language:

> The writer's purpose, which was most laudable, seems to have been to induce the Land Department to institute an investigation. It is more than doubtful whether this letter can be regarded as sufficient notice to the United States of the existence of the particular frauds now in question, even assuming that a volunteered communication from a private citizen to a bureau officer could, in any case, be held to charge the Government with notice of its contents. Waiving, however, the consideration of this question, I am constrained to hold that

laches can not be imputed to the Government. It is true, as a general proposition, that when the Government becomes a party to a suit in its own courts it stands upon the same footing with individuals, and must submit to the law as it is administered between man and man. But this general rule has its limitations, and one of them is that neither the defense of the statute of limitations nor that of laches can be pleaded against the United States. "The general principle is that laches is not imputable to the Government; and the maxim is founded, not on the ground of extraordinary prerogative, but upon a great public policy. The Government can transact its business only through its agents, and its fiscal operations are so various and its agencies so numerous and scattered that the utmost vigilance would not save the public from the most serious losses if the doctrine of laches can be applied to its transactions."

In the case last quoted from, the strongest possible charges of fraud were made, the manner pointed out, the very lands embraced in the suit were named by governmental townships, and yet the doctrine that laches will not be applied was enforced and the best of reasons given.

A different kind of a case is that of *The United States* v. *The City of Alexandria* (19 Fed., 609). There a bill for a specific performance was filed on behalf of the United States against the city of Alexandria to require the delivery of 3,500 shares in the Chesapeake and Ohio Canal, which should have been delivered in

March, 1837, a bill having been filed in 1882, after a period of forty-five years. Judge Hughes, of Virginia, quoting a long list of cases, in a most able and instructive opinion, refused to entertain the doctrine of laches, and held for the United States.

In the case of *The United States* v. *Bee* (54 Fed., 112), the circuit court of appeals for the ninth circuit refused to approve of the defense, though a claim on a bond of a United States consul was twelve years old and the principal in the bond was dead, that the sureties were thereby relieved as against the United States. although they would have been at the suit of any private plaintiff, and in this case Judge Gilbert cites a large number of authorities, saying:

> Neither does the negligence of the Treasury Department release the sureties. * * * If the obligee in the bond were any other than the Government, this defense might avail in behalf of the sureties, but the neglect of the United States officials does not excuse Foster's wrong in the first instance, in drawing for more money than was due him, or his subsequent failure to refund the same. All the property of the United States is held in trust for the people, and it is now well settled upon grounds of public policy that the public interests shall not be prejudiced by the neglect of the officers or agents to whose care they are confided.

This case was as late as 1893.

In the case of *The Willamette Valley and C. Wagon Road Co.* (54 Fed., 807, Judge Gilbert, in his opinion, on page 810, said:

> So far as laches is concerned, the decision of the Supreme Court in this case (and other cases cited) must be regarded as finally settling the doctrine that laches or staleness of claim can not be set up as a defense in a suit in equity brought by the United States to assert rights vested in them as a sovereign Government when Congress has clearly manifested its intention otherwise.

It will thus be seen that the Supreme Court of the United States has in the most clear and convincing language possible set at rest forever the defense of laches against the United States and enunciated the doctrine that its Government and people can not be held responsible for the delay, negligence, or fraud of its officers, and it is clearly seen that in various parts of the Union circuit courts of appeal and circuit courts have uniformly and unfailingly applied this doctrine in the cases arising before them as one not only decided and settled, but settled upon sound principle. And this has been done in cases where the hardship was apparently so much greater than in the case at bar as to seem to place the application of the doctrine to this case beyond the shadow of doubt.

Even under the rules governing private litigants, we submit that the evidence fails to show a state of facts calling clearly for the application of the doctrine of laches.

Knowledge of the frauds charged in the complaint was first brought home to the Government by a report of its special agent, Webster Eaton, in May, 1885. (See pp. 480–481 of record.)

The facts were at once communicated to the Department of Justice, which alone had authority to deal with the matter (see letter of Acting Secretary of the Interior to Attorney-General, p. 481 of record), and an action was promptly begun to annul the patents.

At that time the lands were still held by James Stinson, the party charged with perpetrating the fraud, and they were and still are in a state of nature. Not a dollar has ever been expended upon the lands in the way of improvement, and though they have largely increased in value, it is by virtue of the "unearned increment" upon which he has no claim, moral or equitable. Moreover, it will be found, by reference to the testimony of James Bardon, a witness for the defense (pp. 273–274), that the greatest increase accrued subsequent to the commencement of the original action.

It may be claimed, on the part of appellees, that certain contests, begun in an early day, and the correspondence relating thereto between Col. Hiram Hayes and the land department charged the Government with knowledge of these frauds.

A mere glance at this evidence will show that such is not the case. The notices were published in a local newspaper of Superior. There is no proof that any Government official ever saw them. The chances are that none ever did; and if he had, he would have learned nothing from them, as the grounds of contest are not stated.

The only fraud specifically mentioned in the letters of Colonel Hayes was the alleged previous entry by cer-

tain of the preemptors of Government lands in Minnesota (see p. 478), and that was met by the reply of the Commissioner that such lands were subject to cash entry, and therefore did not bar the purchasers from preemption (p. 479).

The same letter informed Colonel Hayes that the patents for the lands in question had already been issued, and he testifies, that upon learning that fact he dropped the matter, and never attempted to pursue it further (p. 375).

There is no other circumstance in the case appealing specially to the court for the application of this doctrine of laches. It is true John Johnson, the active agent of Stinson in these transactions, is dead, but his death occurred within two or three years after the alleged frauds, and long before discovery thereof, and the same is true of other deaths occurring among the preemptors.

Moreover, as we have already shown, *there is no substantial dispute as to what actually took place*, but only as to the conclusion to be drawn from the facts, namely, as to whether or not the entries were made honestly and in good faith and for the benefit of the entrymen as *bone fide* settlers, or fraudulently and in the interest, with the connivance, or to the knowledge of Stinson.

Attention is called to the fact that *every living preemptor of the band of 1854* has been called as a witness, to wit: Lorenz Johnson, Peter Norell, and John Johnson, 2d, or John Lonquist, together with another member of the same party, Peter M. Peterson, who did not

preempt any land, but assisted his companions in the work done upon their claims, *and all gave substantially the same account of the expedition* as our preceding résumé of their evidence will show.

Other witnesses, Stuntz, Carlton, Burbank, Gouge, Gustave Johnson, a brother of John Johnson, 1st, and Gibson, active participants in the transactions or having personal knowledge thereof at the time, and still living, have given their evidence respecting the same, all pointing inevitably to the fraudulent character of these preemptions and to Stinson as the prime mover in the scheme of fraud.

And to crown all, this testimony of preemptors and others is supplemented and corroborated, in almost every material particular, by unimpeachable documentary evidence.

Opposed to all this mass of evidence stands alone the mere denial of Stinson that there was a previous agreement between himself and the preemptors. He does not deny the *probative facts*. He attempts no *explanation* of them. His evidence as a whole is evasive, shifty, and conflicting.

With reference to the 1855 preemptions, the five entrymen are all living, but two only were sworn. One, Andrew Wallmark, was shown to have become mentally as well as physically infirm. Sufficient appears to show that he would probably, but for this, have been a witness for the Government, having previously given it his affidavit. (See pp. 352, 353.) As to the two remaining preemptors of that year,

Stinson has not seen fit to avail himself of their testimony, but he certainly can not complain that he was deprived of it by complainants' laches.

As to other witnesses, aside from Gouge and Burbank, the adverse claimants to these preemptions who might have given valuable evidence for the Government have either died or, after being driven out by a mysterious fire (p. 363), have disappeared, so that in respect to loss of evidence the United States alone seems to have suffered by lapse of time

In this state of the facts the language of the court of errors and appeals of New Jersey seems peculiarly applicable:

> The material facts of the case are clearly established by documentary evidence or by the testimony of living witnesses. No serious doubt rests upon any part of the case. The controversy is not seriously embarrassed by the claims of third parties or by conflicting interests. Under such circumstances lapse of time constitutes no ground for refusing relief in equity. (*Obert* v. *Obert*, 12 N. J. Eq., 423, 429.)

STINSON'S CLAIM OF BONA FIDE PURCHASE.

The doctrine laid down in the case of *Hawley* v. *Diller* (178 U. S., 476) fully disposes of this question, since Stinson purchased before patent, upon which point there can be no possibility of dispute.

Nevertheless, we call attention to the fact that the testimony of Stuntz, that of nearly every witness among the entrymen, as well as the testimony of Burbank and others who were about on that occasion,

established by a great preponderance that Stinson perfectly well knew that the law as to settlement, occupation, and cultivation had not been complied with in any particular, and, of course, if our claim of fraud is true he knew best of anybody that the parties were entering the lands solely in his interest, were under his pay and were manipulated, deceived, and defrauded by him.

STINSON'S TESTIMONY.

As hereinbefore stated, through lack of care in drafting the complaint, Stinson's answer on oath was not waived. Taking advantage of this fact, he filed a sworn answer which is claimed by counsel to have the full effect of evidence in the case, and they are undoubtedly correct under the rule of equity procedure. This required that Stinson should be called by the Government for cross-examination upon matters contained in the answer and pertinent to the issues. A careful study of the case satisfies counsel for appellant that no thorough understanding or appreciation of the gross and outrageous fraud then perpetrated and on the trial sought to be defended and explained away can be had without a reading of such cross-examination found at pages 149–193 of the record. Such a reading will disclose a man of 70 or thereabouts, but still clear, discriminating, and well preserved in all his mental faculties, yet to the last degree shifty, evasive, recalcitrant, and in almost every particular acting in bad faith. And we submit that such a reading will give to a court experienced in such matters at

least as unfavorable an impression of the defendant's case as any that can be obtained through any other testimony in the record. Before a commissioner, having no power to enforce obedience such as that possessed by a court, Stinson, when pushed to a point where he must openly deny or confess, was shielded by his counsel in several instances and absolutely refused to answer pertinent questions. We respectfully request that his testimony be perused in its entirety.

For the reasons above given and others which counsel may consider in oral argument, we respectfully submit that a clear and undoubted case, by a heavy preponderance of testimony and evidence, was made by the complainant, and that the decrees of the lower courts should be reversed and this land, so unjustly obtained, restored to its rightful owner.

MARSDEN C. BURCH,
Special Assistant to the Attorney-General.
JOHN B. SIMMONS,
Special Assistant United States Attorney.
HENRY M. HOYT,
Solicitor-General.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904.

NO. 153.

UNITED STATES OF AMERICA,

Appellant,

vs.

JAMES STINSON, HENRY J. STINSON AND MICHAEL S. BRIGHT, AS RECEIVER OF JAMES STINSON,

Appellees.

BRIEF FOR APPELLEES.

While we do not by any means concede that there is any testimony in this case from which a fraud upon the government can be inferred, yet we desire at the outset to call attention to the rule firmly settled by repeated cases in this court, in respect to the amount and character of the proof necessary to annul a patent conveying the public lands.

"The burden of proof in such cases is upon the government. The presumption attending the patent, even when directly assailed, that it was issued upon sufficient evidence that the law had been complied with by the officers of the government charged with the alienation of public lands, can only be overcome by clear and convincing proof." *United States v. Iron Mining Co.*, 128 U. S. 673, 676.

"We take the general doctrine to be, that when in a court of equity it is proposed to set aside, to annul or to correct a written

instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof." *Maxwell Land-Grant Case,* 121 U. S. 325, 381.

"It thus appears that the title of the defendants rests upon the strongest presumptions of fact, which, although they may be rebutted, nevertheless can be overthrown only by full proofs to the contrary, clear, convincing and unambiguous. The burden of producing these proofs and establishing the conclusion to which they are directed rests upon the government. Neither is it relieved of this obligation by the negative nature of the proposition it is bound to establish." Authorities are then cited to show that in some instances the burden of proving a negative rests upon the complaining party; and especially so where the negative allegation involves a charge of fraud against the party whose conduct is complained of, for which it is sought to defeat an estate. *Colorado Coal Co. v. United States,* 123 U. S. 307, 317; *United States v. Bell Telephone Co.,* 167 U. S. 240.

The important and conclusive case of *United States v. Budd,* 144 U. S. 154, will be noticed in another connection.

It is now almost half a century since the patents now sought to be set aside were issued. During all that time the title has rested in the defendant James Stinson, with no attempt on his part to dispose of it (except the transfer to his son, which we will discuss later); and during all which period the government has had notice that fraud or irregularity was claimed in these

entries. It was even sought to be proved on the part of the United States that there was a reputation or talk of fraud at Superior in connection with these entries; and in that connection it was shown that this talk or reputation related commonly to all the entries made in that region; including those of Judge Nelson, United States district judge for Minnesota, Senator Hunter, Mr. Cochran and others, as well as to these here in question.

Nor did counsel for the government attempt to make full or complete proof. They deliberately omitted to call as witnesses Gustav Johnson, Andrew Wallmark and Ole Westerland, three of the pre-emptors.

Meanwhile Mr. Stinson, as well as his co-defendant, Henry J. Stinson, has ceased to have any interest whatever in these lands, or the result of this suit. He has become hopelessly insolvent, and all his property is in the hands of a receiver. Innocent creditors only are interested, and if these patents are set aside they only will be injured.

Thomas Stinson, the principal defendant, in his answer to the bill denies positively and specifically every allegation thereof charging him with fraud in connection with the purchase of said lands. He there states the manner in which he became interested in western lands, as follows (R. 33): "That his father, Thomas Stinson, resided at Hamilton, in Canada, during his life-time, and was possessed of considerable property and means, and between the years 1850 and 1857 he placed in the hands of this defendant moneys to be invested in real estate in Wisconsin and Minnesota; with such moneys this defendant purchased many tracts of land in said states, acting in such purchase as the agent of his father, and taking the title thereto in his own name as a matter of convenience in the transaction of business, and for the purpose of making sale and conveyance thereof; and this defendant furnished portions of the money of his father to an agent residing at Hudson, Wisconsin, at

which place a land office of the United States was located, with directions to purchase lands from persons who might have obtained title thereto from the United States, and who desired to dispose of the same; and this defendant further says that among the land so purchased for his father, Thomas Stinson, and with the money of the said Thomas Stinson, were the fourteen quarter sections of land described in the bill of complaint, and that the purchase price of the said several tracts of land was paid for entirely with the money belonging to the said Thomas Stinson, and the deeds were taken to this defendant as trustee for his said father, and that he had no personal or pecuniary interest whatever in said quarter sections of land, or any of them, at the time of such purchase, and the making of the deeds by the several persons making entry thereof." He further states that in the year 1855 he purchased from his father two quarter sections of said land, and that in April, 1856, he executed instruments in writing declaring said trusts.

Further answering, and particularly as to the allegations of the bill respecting the alleged agreement or agreements with the said persons who made entry of the several tracts of land and the fraud charged therein, he says (R. 35): "That he was very much interested as one of the original proprietors of Superior, now known as the city of Superior, at the western end of Lake Superior, and had charge to a certain extent of the improvements made in opening and grading streets, constructing bridges, etc., at said place, and for that purpose he employed the said first John Johnson to hire laborers to work on the opening of said streets and making of such improvements for the proprietors of said Superior, and that said John Johnson did hire persons to work as laborers at said place, and among them were, as he is informed and believes, some of them named in the bill as having entered some of said fourteen quarter sections of land; and who he says, upon information and belief, went to Superior and there labored for a considerable time

under such employment; but this defendant denies that he in any way employed the said persons, or the fourteen persons named in the bill, or any of them, to enter upon any public land, or to assert any pre-emption claim thereto; and he says, upon information and belief, that each one of the said fourteen persons named in the bill as having entered said fourteen quarter sections of land did enter upon said quarter section of land subsequently entered by him and erected residences thereon and resided therein, and subsequently made claim to such lands under the pre-emption laws of the United States at the land office in Hudson, Wisconsin; and when such fourteen entries were made, and not before, that the said lands were purchased by and conveyances made to this defendant, as aforesaid. He further says that such purchases were only a portion of lands that were obtained by him, and titles taken in his name as aforesaid, with the money of his father, and conveyances made to this defendant as a trustee for him.

"This defendant, further answering the bill of complaint, says, upon information and belief, that this suit is not prosecuted for the benefit of the complainant, but for the benefit of certain private individuals who prompted the commencement of the suit, and are now prosecuting the same in the name of the United States, and with the aid of its officers, in order that they may be enabled to make entry of the said several tracts of land by the location of land script thereon, or the payment of the price fixed by the laws of congress; and he further says upon information and belief and avers, that prior to the commencement of any suit in the name of the United States against this defendant a combination and conspiracy was formed by certain persons residing at Superior, in Douglas county, Wisconsin, in connection with others residing at Saint Paul, Minnesota, and for the purpose of carrying out the said conspiracy the persons so residing in Saint Paul furnished to those living at Superior city, or in its vicinity, the sum of twenty-five thousand dollars, to be used for erecting houses upon each of said fourteen tracts of land, for the payment of lawyers' fees and other expenses necessary to set aside the title of this defendant and secure said lands to themselves; and this defendant avers upon

like information and belief, that William H. Newton, Edmund R. Otis, Robert Howenstine and others residing at said Superior city were parties to such combination and conspiracy, and that one O. W. Streeter was employed as attorney by them to prosecute suits for the recovery of said lands, and that this proceeding is the result of such arrangement."

The circuit court, after full consideration of all the evidence, dismissed the bill with a positive finding of fact recited in the decree that there was no fraud whatever with respect to the purchase of said lands by James Stinson. (R. 495.) This decree has been affirmed by the court of appeals mainly upon the ground of laches on the part of the appellant. (R. 520–523.) This question may therefore properly be considered before any argument on the facts.

I.

LACHES ON THE PART OF THE APPELLANT.

The bill of complaint filed February 25, 1895, charges fraud on the part of the appellee, James Stinson, with respect to fourteen entries of public lands therein described which were made in 1854 and 1855. (R. 1–23.) It was incumbent upon the appellant to set forth the facts excusing the delay in bringing suit. Courts of equity act upon their own inherent doctrine of discouraging for the peace of society antiquated demands and refuse to interfere when there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights. Long acquiescence and laches by the parties out of possession are productive of much hardship and injury to others and cannot be excused but by showing some actual hindrance or impediment caused by the fraud of the parties in possession which will appeal to the conscience of the chancellor. The party who makes such appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of the claim; how he came to be so long ignorant of his rights and the means used by the defendant to fraudulently

keep him in ignorance; and how and when he first came to the knowledge alleged in his bill; otherwise the chancellor may justly refuse to consider his case on his own showing without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the answer.

The foregoing is substantially the language of this court in *Badger v. Badger,* 2 Wall. 87, 94, citing from previous decisions, and approved in *March v. Whitmore,* 21 Wall. 178, 184. The same rule has been stated in *Hume v. Beale,* 17 Wall. 326; *Sullivan v. P. & K. Ry. Co.,* 94 U. S. 806; *Richards v. McAll,* 124 U. S. 183, and in other cases cited later in this brief. This doctrine should be reasonably applied to a suit brought by the government to recover lands held for a long period of time under conveyances made in ostensible compliance with the law. *United States v. White,* 17 Sawyer, 561, 565.

In attempted compliance with this rule, the appellant in the bill of complaint after making the charges of fraud in connection with the entries of the land alleges (R. 23): "That your orators did not discover said fraud, or either or any of them, until the year 1885, when a special agent of your orators' general land office, by directions of that office, made investigation relative thereto and discovered and reported the same to your orators' said general land office." There is nothing here set forth showing why the government was so long ignorant of its rights, any impediment to an earlier prosecution of the claim or any charge against the defendant in that connection. It is submitted that this averment does not comply with the rule of the court as above stated. The bill of complaint was verified and required an answer under oath, the same not being waived. (R. 22.) The answer of James Stinson, who has held the record title of these lands ever since the purchases were made, denies specifically under oath all charges of fraud contained in the bill and after alleging that he had paid $75,000 of taxes on said lands prior to 1892, and that there is still a greater amount due

which has since been levied, and that the instant suit was instigated by outside parties, contains this averment (R. 38): "This defendant, further answering the bill of complaint, sets up as a defense and a bar to relief by the complainant the expiration of time since the sale of said several tracts of land by the United States to the several persons who made entry thereof before the commencement of this action, and avers that the commissioner of the general land office was informed of the allegations of fraud now contained in this bill in the year 1856, and that the evidence of such information has been at all times accessible to his successors in office; and this defendant insists that because of these facts a court of equity ought to remain passive, and not give any relief to the complainant in the premises." *United States v. Beale,* 127 U. S. 338, is applicable to such a situation.

The answer under oath, insofar as it is responsive to the bill, is conclusive unless overcome by satisfactory testimony of two witnesses or of one corroborated by circumstances equivalent in weight to that of another. That rule applies also to the denials of the answer to the charges of fraud contained in the bill. *Vigel v. Hopp,* 104 U. S. 441 (fraud charged); *Southern Development Co. v. Silva,* 125 U. S. 247 (fraud charged); *Morrison v. Durr,* 122 U. S. 518 (fraud charged); *Beals v. Railway Co.,* 133 U. S. 295; *Conley v. Nailor,* 118 U. S. 127; *American File Co. v. Garrett,* 110 U. S. 288, 293; *Monroe Cattle Co. v. Becker,* 147 U. S. 47, 54; *Dravo v. Fabel,* 132 U. S. 487, 489; *Union Ry. Co. v. Dull,* 124 U. S. 173.

The only proof offered by the appellant to sustain this averment excusing laches was the report of Webster Eaton to the land office, dated June 4, 1885 (R. 480, 481), and the letter of the acting secretary of the interior to the attorney general. (R. 481.) Mr. Eaton's report states that the men who made the entries were hired by James Stinson to pre-empt the lands; that none of them ever established residences on the land; that

each claim was transferred to James Stinson on the day proof was made as shown by the records of Douglas county, Wisconsin, and that James Stinson still held title to the lands. The letter of the acting secretary of the interior simply refers the matter to the attorney general so that the only excuse for the delay was found in Mr. Eaton's report, and every fact therein stated had been brought to the attention of the general land office and to the government officials as early as 1856.

The appellant offered in evidence a letter from the acting commissioner of the land office dated August 19, 1895, to the special land inspector at Duluth, Minn., stating: "The records of this office show that on December 12, 1855, Hiram Hayes transmitted five affidavits in relation to certain Hudson river cash entries," referring to the numbers which represent seven of the entries attacked in the bill of complaint. He states that a careful search has been made for these affidavits but they could not be found. (R. 478.)

There was also offered in evidence a letter from the commissioner of the general land office enclosing a letter from Hiram Hayes, dated December 22, 1856, addressed to the register at the Stillwater land office relating to the claims of John Johnson, Andrew Wallmark, Otto Wallmark and Israel Johnson, four of the parties who made the entries of land that was conveyed to James Stinson and which are attacked in this suit. (R. 478.)

There was also offered a letter from the commissioner of the general land office, dated December 2, 1899, containing a certified copy of a letter, dated October 20, 1856, signd by Thos. A. Hendricks, commissioner, and addressed to Hiram Hayes, Superior, Wisconsin (R. 479), relative to the same entries. Also a letter from Hiram Hayes to the general land office, dated January 4, 1856, relating to two of these entries and making adverse claim thereto on behalf of his clients and asking that the department would suspend the issue of patents to the two

John Johnsons, and that the validity of these pre-emptions be submitted to an investigation "since fraud cannot fail to be proved in either case." (R. 375, 376.) Also a letter of Thomas A. Hendricks, as commissioner of the general land office, to Hiram Hayes, of Superior, Wisconsin, dated May 22, 1856, relating to six pre-emption entries therein mentioned, and stating that the patents had been issued. It appears from public records that the land office had been opened at Superior, Wisconsin, in 1856, and that E. B. Dean was the register or receiver. His name is mentioned by appellant's witness Burbank. (R. 72.)

Appellees offered in evidence notices of hearing of contests in pre-emption land cases before the receiver and register of the land office at Superior, Wisconsin, on the 11th day of September, 1856, relating to the claim of John Johnson, Gustav Johanson, Israel Johnson, Ole Westerland and Andrew Wallmark, six of the persons who made the entries which are attacked in this bill. (R. 376, 377.)

Mr. Burbank, a witness called for the appellant, testified with respect to an attempted contest on his part relating to one of these entries and to his interviews with Mr. Dean, land agent at Superior. (R. 72, 73.) Mr. Gouge was also produced as a witness by the appellant with respect to an attempt on his part to pre-empt one of these tracts of land in 1855 or 1856. (R. 358, 372.) The testimony of these witnesses and the records offered in connection therewith establishes beyond controversy the fact that charges of fraud in connection with these pre-emptions were made to the general land office as early as 1855, and to the local land office then at Superior in 1856, and that the charges were made public through the notices relating to the contests and that Mr. Stinson's claim to these several tracts of land was a matter of public record in the office of register of deeds for Douglas county. There is not a single fact stated in the report of Webster Eaton that had not been brought to the attention of

the proper authorities immediately after these titles or some of them had been acquired by the appellant, James Stinson.

Other proof offered shows that the land in 1855 and 1856 was of small value, and that by reason of the development of the country and the growth of the city of Superior, their value had greatly increased, a fact which had controlling weight in prompting these contests. Testimony bearing upon this point will be referred to more fully in connection with the argument upon the facts.

Under the statutes of the United States it was then the duty of these government officials, including the surveyor, if they or any of them believed that reasonable grounds existed therefor, to have caused steps to be taken to set aside the patents to these lands. That obligation rested upon the authorities of the United States as heavily in 1856 as it did in 1885, after these lands had greatly increased in value and after the owner thereof had expended large sums of money for their protection and in the payment of taxes.

While the United States may not be held to the same strict or technical limitations with respect to laches as a private party, when it comes into court invoking equitable relief it is bound by the same rules both of evidence and procedure. If great and unreasonable delay, the death of witnesses and the presumptive loss of papers have so affected the evidence by which the right must be established, the court must dismiss the bill unless satisfied by clear and conclusive proof that the relief should be granted. Charges of fraud were made in connection with these pre-emptions soon after James Stinson had acquired title, but the appellant chose to wait until most of the witnesses were dead and the memory of the living has failed.

John Johnson who is referred to by the appellant as the agent of James Stinson and who might perhaps explain the transactions, is dead, as well as the officers of the government who were then in active charge of these matters.

The rule applicable to the government is so clearly stated by Judge Black that we quote his opinion in full:

"The lapse of time alone would determine the case in favor of Reside's estate. It is a decisive answer to say that the claim is based on transactions which are twenty-three years old. It is a rule of common sense and reason, as well as law, that when a party to a claim has lain by until the evidence concerning it has ceased to exist, and then produces it, the other party is not bound to explain it. It is presumed that he could explain it if his witnesses were alive and his papers preserved; and that presumption shall stand in place of all the proof which might have been demanded when the matter was fresh. I admit that the statute of limitations cannot be pleaded against the government as a technical bar. I do not speak of that conclusive legal presumption which will be created in six years against an individual. But the government is bound like anybody else by the rules of evidence and by the natural presumptions arising from the facts of the case. In some countries there are no statutes of limitation; in all countries there are large classes of cases to which the statutes do not apply. But it is one of the rules of every civilized code that a certain length of time, generally about twenty years, shall be regarded as evidence that a claim is either unjust or satisfied; and such lapse of time proves that fact as fully as if it had been attested by credible witnesses. The experience of all mankind has shown that the evidence thus furnished by time is true and reliable. *The judge who disregards it would decide against the original honesty of the case ninety-nine times in a hundred.*

"There is no such impeccability ascribed to the government as will give it the right to deny the evidence. When time testifies against the sovereign, it is heard with as much respect as any other witness would be.

"This is the rule which must be applied to every stale claim, even when it seems to have been clear and free from dispute at first. But where it was originally doubtful and obscure, the presumption which time raises against it is a thousand-fold stronger; and stronger still where the obscurity was produced by the party setting up the claim."

9 Op. Attys. Gen. 204.

In *People v. Clark,* 10 Barb. 129, the New York legislature had passed an act directing the attorney-general to bring suit

to cancel certain patents granted before the revolution. The court says:

"The second ground for vacating the letters-patent alleged in the complaint is, that the lieutenant-governor, George Clarke, was interested in the grant, and that that interest was fraudulently concealed from the colonial council and the crown. A man intrusted with power by his sovereign ought not to use that power for his own advantage, and to the injury of his sovereign; and if he do, he ought to be punished. But if in this case the usual rent was reserved to the crown, and the usual condition of settlement inserted in the patent, how was the crown defrauded? The complaint makes no suggestion that the letters-patent do not contain the full rent and all reservations and conditions in favor of the king which were at that day usually inserted in letters-patent; nor does the complaint contain a suggestion that any fraud was practiced to the prejudice of the king. I deny that the judicial history of the world can furnish an example where an emperor, a king, or a republic, whether heathen or Christian, has, before this, brought a subject or citizen into court to answer for a fraud committed by some person through whom he claims title one hundred and twelve years before he was called on to answer. In the days of Methuselah witnesses might have been found to testify in relation to a fraud one hundred and twelve years after it was committed; but it would now be idle to attempt to find such witnesses. And does not the well-being of the state and the interest and security of individuals demand that even sovereigns shall not commence actions founded on transactions in relation to which no man now living is old enough to testify? The members of the colonial council and the king, from whom it is alleged that the interest of lieutenant-governor George Clarke was fraudulently concealed, have long since returned to their original dust, and no one but Him who rules in heaven can know what was or what was not concealed from them. If a claim so stale as this be contenanced by any court, no man holding under a colonial grant can have perfect confidence in his title.

"In the case of *Mayor of Hull v. Horner,* Cowper's Rep. 110, Lord Mansfield said: 'I remember in general, though I cannot recollect the particulars of it, a case in the duchy court, between the king and Mr. Brown, of Snelbrook. It was before the late *nullum tempus* bill. The evidence in support of the

title was a possession and enjoyment of one hundred years, and I held that, though such possession and enjoyment could not conclude as a positive bar, because there was no statute of limitations against the crown, yet it might operate as evidence against the crown of right in the defendant, if the claim could have a legal commencement; though such commencement could not be shown.' Even without a patent, and without a statute of limitations, Lord Mansfield held a possession of one hundred years was evidence of a right against the crown.

"If the questions in this case may be deemed to belong to a court of equity, I cannot persuade myself that they are therefore never to be put at rest by lapse of time. It would be an alarming doctrine to hold that every man in the state who holds any land under a grant before the revolution may be turned out of possession by the plaintiffs if a king was cheated who, one or two hundred years since, made the grant."

In *Clark v. Boorman,* 18 Wall. 493, Judge Miller states the rule of repose in the following vigorous language:

"Every principle of justice and fair-dealing, of the security of rights long recognized, of repose of society and the intelligent administration of justice, forbids us to enter into an inquiry into that transaction forty years after it occurred, when all the parties interested had lived and died without complaining of it, upon the suggestion of a construction of a will different from that held by the parties concerned, and acquiesced in by them through all this time."

The case of *United States v. Moore,* 12 How. 222, was a suit under a special act of congress to obtain a confirmation of a Spanish claim. In the opinion the court says:

"We are called on to decide in this case according to the rules governing a court of equity, and are bound to give due weight to lapse of time. The party was under no disability, and slept on his rights as he now claims them, for nearly fifty years, without taking a single step. He makes no excuse for his delay, and cannot now get relief by having his title completed. No case has come within our experience where obscurity and antiquity of the transactions, more forcibly than in the present case, required a court of equity to bar a complaint on legal presumptions founded on lapse of time, and where the bar should take the place of individual belief."

The case of *United States v. Arredondo,* 6 Pet. 746, arose on a petition under a special act of congress for settling land titles in Florida, the appellee claiming under a Spanish grant. The suit was in chancery, and it was conceded that the suit must be tried between the United States and the claimant just as if it had been a suit between individuals. The court said:

"Though we should even doubt, if, sitting as a court of common law, and bound to adjudicate this claim by its rigid rules, the case has not been so submitted. The proceeding is in equity, according to its established rules, our rules must be in conformity with the principles of justice, which would, in a case such as this, not only forbid a decree of forfeiture, but impel us to give a final decree in favor of the title conferred by the grant."

By Mr. Justice Field, in *United States v. Flint,* 4 Sawyer, 58, the rule in question is thus stated:

"The United States by virtue of her sovereign character, may claim exemption from legal proceedings; but when they enter the courts of the country as a litigant they waive this exemption, and stand on the same footing with private individuals. Unless otherwise provided by statute, the same rules as to the admissibiiity of evidence are then applied to them; the same strictness as to motions and appeals is enforced; they must move for a new trial, or take an appeal within the same time, and in like manner, and they are equally bound to act on evidence within their reach; and when they go into a court of equity they must equally present a case by allegation and proof entitling them to equitable relief.

"Although on grounds of wise public policy no statute of limitations runs against the United States, and no laches in bringing a suit can be imputed to them, yet the facility with which the truth could originally have been shown by them if different from the finding made, the changed condition of the parties and of the property from lapse of time, the difficulty, from this cause, of meeting objections which might, perhaps, at the time have been readily explained, and the acquisition of interests by third parties upon faith of the decree, are elements which will always be considered by the court in determining whether it be equitable to grant the relief prayed. All the attendant circumstances of each case will be weighed, that no

wrong be done to the citizen, though the government be the suitor against him.

"After the archives were arranged, and the alleged unsearchable condition ceased, nearly eighteen years elapsed before the present bill was filed, and no excuse is offered for this delay. During these eighteen years, which constitutes a period equivalent almost to a century in other countries, great changes in the condition and value of real property in the State have occurred. During this period the original claimant, who might, perhaps, have explained the alleged alteration of dates, has deceased, and third parties have acquired his interests, and, it is said, have made valuable and expensive improvements upon the property. Courts of equity will not entertain a suit to vacate a decree, even in case of palable frauds, when there has been unnecessary delay in its institution, and the rights of third parties, as in this case, have intervened in reliance upon the decree. Considerations of public policy require prompt action in such cases; and if by delay in acting innocent parties have aquired interests, the courts will turn a deaf ear to the complaining party. This is the doctrine of equity, irrespective of any statute of limitations, and is irrespective of the character of the suitor. It is essential that this doctrine should be vigorously upheld for the repose of titles and the security of property."

The reasons on which this rule is based are that there is a presumption arising from the lapse of time in favor of the defendant's title and that it would be difficult to procure the witnesses who might know the facts. *People v. Clark,* 10 Barb. 120; *Maxwell v. Kennedy,* 8 How. 221; *Clark v. Boorman,* 18 Wall. 509; *Brown v. County of Buena Vista,* 95 U. S. 160; *Wilson v. Anthony,* 19 Ark. 21.

The time which must elapse to justify a court of equity in refusing to act varies in different cases, but it may be assumed that the period best approved is twenty years. *Elmendorf v. Taylor,* 10 Wheat. 173; *Sullivan v. Portland R. R. Co.,* 94 U. S. 811; *McKnight v. Taylor,* 1 How. 168; *Godden v. Kimball,* 92 U. S. 210.

In this connection attention may properly be directed to the

policy of the government upon this subject as indicated by recent legislation.

The right to maintain this suit is founded upon the provisions of the pre-emption laws of the United States, as sufficiently appears by the bill of complaint and by the brief of counsel for appellant.

Section 2263, Revised Statutes, relates to proof of settlement and assignment of claims and the last clause provides: "And any and all assignments and transfers of the rights hereby secured prior to the issuing of patents shall be null and void." These statutes were under consideration in *Myers v. Croft*, 13 Wall. 291. Mr. Justice Davis, in the opinion, says (296): "In case of false swearing the pre-emptor was subject to a prosecution for perjury, and forfeited the money he had paid for the land; and any grant or conveyance made by him *before* the entry was declared null and void, with an exception in favor of *bona fide* purchasers for a valuable consideration. It is contended by the plaintiff in error that congress went further in this direction, and imposed also a restriction upon the power of alienation *after* the entry, and the last clause in the twelfth section of the act is cited to support the position." That clause is then quoted and the opinion continues: "The inquiry is, what did the legislature intend by this prohibition? Did it mean to disqualify the pre-emptor who had entered the land from selling it at all until he had obtained his patent, or did the disability extend only to the assignment of the pre-emption right? Looking at the language employed, as well as the policy of congress on the subject, it would seem that the interdiction was intended to apply to the right secured by the act, and did not go further. This was the right to pre-empt a quarter section of land by settling upon and improving it, at the minimum price, no matter what its value might be when the time limited for perfecting the pre-emption expired. *This right was valuable and independently of the legislation of congress assignable.*"

The pre-emption laws of the United States were repealed by the act of March 3, 1891, with a special saving clause which does not preserve this right of action, and it may therefore be a question whether the general saving clause of the statute applies. (Sec. 13, R. S. U. S.)

The act of March 3, 1891, relates to timber culture lands and section 4 repeals the pre-emption laws and contains the provision: "All *bona fide* claims lawfully initiated before the passage of this act under any of said provisions of law so repealed may be perfected upon due compliance with the law in the same manner, upon the same terms and conditions and subject to the same limitations, forfeitures and contests as if this act had not been passed." It will not be contended that the right to maintain this suit is saved by the foregoing provision.

At the time these laws were repealed by the act of 1891 the appellee James Stinson, had acquired an absolute title to all the lands in question subject to the liability of forfeiture upon the grounds stated in section 2262. This is made clear by the repeated decisions of this court.

A patent appropriates land. Any defects in the preliminary steps which are required by law are cured by the patent. *Hoofnagle v. Anderson,* 7 Wheat. 214; *Bagnel v. Broderick,* 13 Pet. 436.

A bill in chancery brought by the United States to set aside and vacate a patent, issued under its authority, is not to be treated as a writ of error or petition for rehearing in chancery, or as if it were a mere trial before the land office. The holder of a patent from the United States cannot be called upon to prove that everything has been done that is usual in the proceedings in the land office, before its issue. Nor can he be called upon to explain every irregularity, or even impropriety in the process by which the patent was procured. *United States v. Marshall Silver Mining Co.,* 129 U. S. 579.

Mr. Justice Sawyer in *United States v. White,* 17 Fed. 561,

strongly condemns suits of this character. That was a suit to set aside a patent upon the ground that the statements in the affidavit in regard to settlement and improvement were false and fraudulent, and a demurrer to the bill was sustained. He says (564): "There is no possible pecuniary injury to complainant. The most that can be said is that a principle of public policy was violated, and thereby a moral wrong resulted by reason of the legal disqualifications, under the pre-emption act, of defendant to purchase. But the wrong was only *malum prohibitum*, not *malum per se*. . . . In view of the notorious liberality in favor of purchasers, not to say looseness, with which the pre-emption laws have, ever since their adoption, been administered all over the western states, to relax the rules referred to in the authorities cited, especially where no actual pecuniary damage or injury has resulted either to the government or private parties, and 'retry every case in which' the action of the land office, as well as 'judgments or decrees rendered on false testimony given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent,' would open a Pandora's box of evils 'far greater than any compensation arising from doing justice in individual cases.' It would open the door to any party stimulated by malice or other unworthy motive, who could, upon *ex parte* and false statements, obtain the ear of the attorney-general to promote suits in the name of the United States, to the great vexation of honest, as well as dishonest, pre-emptors, and to the great detriment of the public peace and prosperity." He adds (565): "To meet this point and as a basis for decree for forfeiture of the money as a part of the relief demanded in the bill, the United States attorney relies on section 2262, Revised Statutes," the provision of which is then quoted. "This is highly penal, and the only remedy, or rather punishment, other than an indictment for perjury, that appears to be provided by law for the wrong sought

to be redressed. But the United States has come into the wrong forum to enforce this penalty. 'It is a universal rule in equity never to enforce either a penalty or a forfeiture.' (Citing Story's Equity.) So a bill of discovery will not lie in a case which involves a penalty or forfeiture. . . . If the United States desires to enforce the penalties—the forfeiture of the money paid and the land patented—provided for in section 2262, Revised Statutes, cited, it must proceed in some appropriate mode at law, where the defendant will be entitled to a trial by a jury of the question as to giving false testimony."

The frequency of suits of this character and the evils attending such litigation and the known looseness with which the preemption laws had been administered, as referred to in this opinion, furnish sufficient grounds, if any reason was required, for the action of congress in repealing section 2262, without a clause saving rights of actions that might theretofore have accrued. Congress had the power, if it saw fit, in the repeal of the preemption laws to confirm existing titles. *United States v. Conway,* 175 U. S. 60.

A repealing statute that contains no saving clause operates as well upon pending cases as those thereafter commenced. *Given v. United States,* 184 U. S. 669, 675.

The congress has plenary power to dispose of the public lands. *Emblen v. Lincoln Land Co.,* 184 U. S. 660, 664.

The general law may grant titles as well as a special law. *Damon v. Hawaii,* 194 U. S. 154.

This is of the nature of a a suit to enforce a forfeiture and the rule which applies to such cases is well settled. *United States v. The Burdett,* 9 Pet. 682; *Chafee v. United States,* 18 Wall. 516; *United States v. Maxwell Land Co.,* 121 U. S. 325; *United States v. Budd,* 154 U. S. 144.

Section 1047, of the Revised Statutes, prescribes: "No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States shall be

maintained . . . unless the same is commenced within five years from the time when the penalty or forfeiture accrued.

Adams v. Woods, 2 Cranch, 336, was an action of debt brought to recover a penalty imposed by the act prohibiting the slave trade. The statute being pleaded, a demurrer was filed to the plea and it was contended that the statute only applied to criminal proceedings. The court sustained the plea saying: "In expounding this law it deserves some consideration that if it does not limit actions of debt for penalty, those actions might in many cases be brought at any distance of time. This would be utterly repugnant to the genius of our laws. In a country where not even treason can be prosecuted after a period of three years, it can scarcely be supposed that an individual would remain liable to a pecuniary forfeiture." This case will serve to illustrate the application which has been made of this statute.

Section 8, of the act of March 3, 1891, which repealed the preemption laws, is entitled: "An act to repeal the timber culture laws and for other purposes." (26 Statute at Large, p. 1092.) Section 8 of that act provides: "That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents." The reading of this statute in connection with sections immediately preceding would convey the impression that it applied only to entries under the timber culture laws, but however that may be, it indicates a purpose on the part of the government to place a reasonable limit upon suits of this character. These recent enactments reinforce the argument that the doctrine of *laches* should be applied to the disposition of this suit.

II.

ARGUMENT ON THE FACTS.

Fourteen pre-emptions are brought in question by the bill and answer in this case. Two of these made by Aaron Peterson and Martin Larson were in pursuance of settlements made August 17, 1854, final proof being made June 1, 1855. The following table shows the dates and other statistics relating to these pre-emptions:

FIRST GROUP.

Name of Pre-emptor	Time of Settlement.	Proved up.	Still Living?	Contested by	Date of Patent.	No. of Certificate.
Aaron Peterson.....	Aug. 17, 1854	June 1, 1855	No.	Lander Vevance.	May 1, 1856	2906
Martin Larson.....	Aug. 17, 1854	June 1, 1855	No.	Peter Bushman..	May 1, 1856	2907

SECOND GROUP.

John Johnson No. 1.	Sept. 27, 1854	Oct. 24, 1854	No.	Saxton Lyon....	Dec. 15, 1855	1848
Lorens Johnson*....	Sept. 28, 1854	Oct. 24, 1854	Yes.	.....	Dec. 15, 1855	1851
Sven Larson.....	Sept. 26, 1854	Oct. 24, 1854	No.	.....	Dec. 15, 1855	1850
Peter Norrell†.....	Sept. 27, 1854	Oct. 24, 1854	Yes.	.....	Dec. 15, 1855	1849
Andrew Svenson...	Sept. 28, 1854	Oct. 24, 1854	No.	.....	Dec. 16, 1855	1847
Sven Magnusson ...	Sept. 26, 1854	June 1, 1855	No.	.....	May 1, 1856	2908
John Johnson No. 2.	Sept. 26, 1854	June 22, 1855	No.	John T. Morgan.	May 2, 1859	3212

THIRD GROUP.

Gustav Johnson‡....	May 21, 1855	June 22, 1855	Yes.	A. B. Burbank ..	Mar. 25, 1863	3209
Israel Johnson*.....	June 11, 1855	June 22, 1855	Yes.	Urgelle Gouge...	May 1, 1856	3213
Andrew Wallmark‡.	June 11, 1855	June 22, 1855	Yes.	Charles Frazier..	May 1, 1856	3210
Otto Wallmark†.....	June 11, 1855	June 22, 1855	Yes.	C. H. De Graff...	May 1, 1856	3208
Ole Westerland‡.....	June 11, 1855	June 22, 1855	Yes.	Louis Rocheford.	May 1, 1856	3211

*Examined on the part of the government.
†Examined on the part of the defendants.
‡Not examined.

Argument as to the first group. There is no evidence whatever relating to the pre-emptions of Peterson and Larson who settled August 17, 1854, who may be called the first group. They are both dead. There is nothing whatever in the record to affect Mr. Stinson, we think, in any manner, as to these

entries. There seems to be nothing upon which even to base a reasonable suspicion, not even the testimony of Gibson, stated below. Even if there were evidence of fraud in one pre-emption this would not be evidence of fraud in others, even though made at the same time; much less in regard to those made at different times. *United States v. Budd,* 144 U. S. 155.

Moses S. Gibson drew some of the pre-emption papers of Peterson, but not of Martin Larson. There is absolutely nothing to connect Mr. Stinson with these entries except this fact that Gibson acted for Stinson at another time.

Argument as to the third group. The testimony as to the third group of pre-emptors who settled in May and June, 1855, and proved up June 22, 1855 most clearly shows, as we submit, that there was no fraud whatever connected with these entries. The only witness called by the government in regard to these pre-emptions was Israel Johnson, while the defendants called Otto Wallmark, and also gave testimony tending to show that Andrew Wallmark has so failed in health, strength and memory, that his testimony would not be reliable. Two others of these pre-emptors of 1855 are still living, being Gustav Johnson and Ole Westerland. Neither of these witnesses were called on behalf of the United States. Israel Johnson, the only witness called by the United States in regard to this group of pre-emptions, testified as follows (R. 90–97):

Direct examination. Q. Did you have anything to do with pre-empting some land in Douglas county, Wisconsin? A. Yes.

Q. Who first spoke to you about it? A. Pretty hard telling; I guess Mr. Stinson and John Johnson.

Q. Which Mr. Stinson? A. I don't know. I don't know the difference between them or the name of them.

Q. Well, where was it that they spoke to you about it? A. On the road between where I lived and Taylor's Falls.

Q. Where was Stinson and John Johnson? A. On the road.

Q. As to whether they were in a buggy or wagon, or something of that kind? A. In a wagon, I think.

Q. Were they together? A. Yes, they were together.

Q. What was said to you about this at that time? A. *What was said, that is so long ago I can't tell you;* they offered me so much to pre-empt land for them, that's all I can recollect.

Q. Well, do you remember what their offer was, what they said about it; tell us about it. A. If I would go up there and pre-empt land they pay me I think $30 a month, and some for my claims besides.

Q. What did you say about it? A. I say I should go.

Q. Did you go? A. I did go.

Q. Did anybody go with you? A. Yes, sir.

Q. Who were they? A. Some of them is dead. Wallmark and his brother, Swen Peterson and some other one, Gustav Vieborg and August Johnson, another fellow his name is Westlung, that's all I can recollect.

Q. Did you all go together? A. We took one claim apiece.

Q. But did you go over to Douglas county together, or did you go separately? A. We went up together and came down together.

Q. How many of you? A. I told you I can't recollect any more.

Q. Now when you got to Douglas county what did you do there about the claim? A. I didn't do anything with it.

Q. As to whether you took up a claim? A. I built a little shanty there.

Q. What claim did you take? A. I don't know; I couldn't read English, and he put my name to what he had a mind to.

Q. Who showed you what claim to take up? A. John Johnson.

Q. How did you know where to go when you went out to build your shanty? A. We had a fellow, John Johnson, to lead us, was along with us to show us the land.

Q. Who told you to go with John Johnson? A. He said we should follow him when we talked with Stinson and him on the road.

Q. What did Stinson say on the road to Johnson? What is the fact as to whether you could speak English, could you speak English then? A. No.

Q. Did Stinson speak Norwegian or Swedish? A. No, I suppose not.

Q. Johnson was Swede and he spoke English? A. Yes.

Q. And Johnson spoke Swedish, did he? A. Yes, sir.

Q. Now what was said there when they were in the buggy about you following Johnson? A. That's what I told you before.

Q. Tell it again, please. A. I can't recollect every word.

Q. Not every word, but what did he say about your doing what Johnson told you to do? A. He told me what I told you, to go up there and pre-empt land, if I go I could get so much every month and so much for my claim.

Q. You don't quite understand it. What was said about your following Johnson? A. I was to follow Johnson, I had nothing else to do with it.

Q. When you got up to Douglas county did you follow Johnson? A. I did.

Q. And what did Johnson do? A. He showed us the claim where we should work.

Q. To whom did he show these claims? A. Those along in my company.

Q. Now what did you do on the claim? A. I cleared a little piece and built a little shanty.

Q. Anything more? A. No.

Q. Did you live on the claim at all? A. Yes, a single night.

Q. And then what did you do? A. Went to another place and worked there. I don't recollect how many of us, but we worked on one claim and moved on to another one and helped each other to put up the houses.

Q. Now then what after that? A. After that I went home, right back.

Q. Did you work on the streets in Superior at all? A. No.

Q. How long were you up there altogether? A. Well, pretty hard telling, I guess it was pretty nearly a month, we went down to Hudson; we stayed at Taylor's Falls until we come back home again. I think it took us a month until we got back home on the same trip.

Q. How long did it take you to go over home from there? A. I think four days to Taylor's Falls.

Q. And the same to come back. A. Yes, sir.

Q. Well, what did you do next about this claim; did you make any papers out? A. Yes, they made out papers.

Q. Where were the papers made out? A. Hudson.

Q. Did you go to Hudson? A. Yes, sir.

Q. How long after you came back from Douglas county? A.

Not long because we stayed home one day, and went over there the next day.

Q. Who went down to Hudson? A. The whole company.

Q. The same that you have told about? A. Yes, sir.

Q. And when you got down to Hudson who did you see there? A. I couldn't tell you, because I don't know them.

Q. As to whether you saw Stinson. A. I believe he must be there, but I can't tell you.

Q. And John Johnson? A. John Johnson was with us the whole time.

Q. Now you say they made out papers for you there? A. Yes.

Q. Now who made out those papers? A. You can't find that out by me, I don't know.

Q. Did you sign any papers there? A. Yes, sir.

Q. As to whether any of the others signed papers there? A. I guess so.

Q. Now did you pay any money there? A. No.

Q. Who did pay the money to the land office? A. Somebody down there, I suppose it was Stinson that paid the money, or Johnson paid the money, I couldn't tell, because it is so long ago I can't recollect. I got some money I know, that's all.

Q. Do you know what papers you signed? A. I signed a form of a deed, but I told you I could not read English, and I don't know what I did sign.

Q. Who was the deed to? A. That fellow that hired me to go up there.

Q. Whom did the deed run to? A. I could not read a word of English.

Q. Whom did you understand it ran to, whom were you told it ran to? A. To Stinson.

Q. You understood that at the time? A. Yes, sir.

Q. Do you remember who told you that? A. No, I don't but Johnson was our man and he told us what to do.

Q. Was this the first year that you came to Minnesota? A. No, I came in the fall, in October, and this was the first year after I guess in April or May.

Q. And you came to Minnesota in 1854? A. Yes, sir.

Q. Did you take up any other land at this time? A. No, I bought of the United States my little farm what I have lived on since.

Q. That was in Minnesota? A. Yes, in Chisago county.

Q. These men that went up to Douglas county with you, what did they do on their claims? A. The same as I did.

Cross examination. Q. Had you ever seen these men that you call Stinson and Johnson before you met them on the road that day when you were going to Taylor's Falls? A. Yes, I believe so, I think I see John Johnson when I first came here.

Q. John Johnson lived in Chisago county, and he was a countryman of yours? A. Yes.

Q. Where is he now? A. Dead.

Q. How long has he been dead? A. I couldn't tell you.

Q. A long time? Yes.

Q. Twenty years? A. No, I don't think it 20 years, but I guess you will find out better than me, I don't recollect.

Q. Did you ever see John Johnson after that time when you went up there? A. Yes, I did.

Q. Had you ever seen James Stinson, this man that you call Stinson, before you met him on the road that day? A. No.

Q. Did you ever see him afterwards? A. When I was in Hudson I suppose I did, but I don't know, that was when I saw him on the road, and he told me that it was that man, and that is all I know about it; Johnson told me that it was that man.

Q. This party of men that you have mentioned were on the way to Taylor's Falls? A. I was alone when I met that man, nobody was with me, I was on my way to Taylor's Falls.

Q. *And all you know about this man is what Johnson told you at that time?* A. *Yes.*

Q. *You didn't talk with Stinson?* A. *I couldn't.*

Q. *And did Stinson talk with you?* A. *No.*

Q. *And you never talked with Stinson in your life?* A. *No.*

Q. *And he never talked with you?* A. *Not that I know of.*

Q. When you got down to Hudson some papers were made out in the office where you were, and those papers you signed? A. Yes.

Q. Whatever they were? A. Yes.

Q. The party that went with you from Taylor's Falls to Superior were Otto Wallmark, Gustav Johnson, or Vieborg, Andreas Wallmark and Ole Westerlung; was anybody else along with you from Taylor's Falls to Superior? A. I can't recollect any more; Ole Westerlung was along I know, I recollect him.

Q. There was another John Johnson, was there not, with you at Superior or at Hudson? A. No, I can't recollect any other John Johnson.

Q. Do you know any other John Johnson called John Johnson the second sometimes? A. Not in our company when I went.

Q. Your recollection is not very clear about this, is it, these transactions which happened so long ago? A. No, certainly not.

Q. And you can't be very certain what was said and done so long ago, can you? A. *Well, what was said I can't recollect, but what I done I can recollect it.*

Q. What you did you recollect? A. Yes.

Q. And you have told us all you did so far as you can recollect? A. Yes, what I can think of.

Q. And all that was said as far as you can recollect? A. Yes.

Re-direct examination. Q. Mr. Johnson, you said that you were to get so much a month, was that paid to you? A. Certainly.

Q. By whom, who paid it. A. Paid to me down in Hudson, I suppose that it came from the same man that the other did; I couldn't understand any English.

Q. It was paid to you at Hudson at the time you signed these papers? A. Yes, sir.

Q. And you didn't pay for the land? A. No.

Q. Now, Mr. Johnson, when you met John Johnson and Stinson on the road, Johnson talked to you in Swedish? A. Yes, sir.

Q. Did Johnson and Stinson talk together? A. Yes, sir.

Q. And after they had talked together did Johnson talk to you? A. Yes.

Re-cross examination. Q. How much money did you get down at Hudson do you recollect? A. No, I don't, I think I got $30 a month and so much for the pre-emption, but I don't know how much there was, I can't tell.

Q. Well, you got more than $30 down there, didn't you? A. Yes.

Q. Did you get as much as $250 do you think? A. No.

Recalled by defendants. Q. You said that John Johnson went up with you? A. I did.

Q. Do you want to correct that? A. I guess I was mistaken. I believe not.

Q. You think John Johnson was not along? A. Vieborg showed us the road and not Johnson, I think. I will take that back, if you please.

Re-direct examination. Q. Showed you the road where?

From Superior? From Taylor's Falls to Superior? A. Yes. We don't know how to go.

Q. Have you talked with anybody about that since you were on the stand? A. With Wallmark.

Q. Which Wallmark, Otto? Did he come to you? A. Yes, he comes to me and told me I was mistaken.

Q. He came to you and told you you were mistaken? A. Yes, and I believe I was. It is so long a time I cannot recollect.

Q. But John Johnson was in Superior while you were there, was he not? A. I believe not. He was in Taylor's Falls when we left there.

Q. Did you not see him in Superior? A. I can't recollect, but I am pretty sure I was mistaken.

Q. Didn't you see him in Superior at all while you were there? A. I don't think so. It is a long time, but Wallmark said he was not there and when he don't know I don't know.

Q. So you were depending on Wallmark's statement? A. Just what he told me.

Q. You rely upon what Wallmark tells you? A. Yes, I believe what Wallmark tells me.

Q. How long do you say you were in Superior, now? A. Well, I said it was nearly a month from the time we left Taylor's Falls until we got home again.

Q. Now, do you say, Mr. Johnson, that you did not see John Johnson there? A. I saw him in Hudson.

Q. Did you say you did not see him in Superior? A. I do say so, but I am not sure.

Q. Who else have you talked to besides Otto Wallmark about this? A. Nobody else here was along with me—in my crowd when we was up there.

Q. Who have you talked with besides Wallmark since you were on the stand before? A. No one.

Q. Who else have you talked with besides Wallmark about this? A. Nobody else here was along with me—in my crowd when we was up there.

Q. I think you said he came to you and said that you were mistaken? A. He did that out in the hall.

Q. Who else was there? A. He talked to me and he said I was mistaken in my witness and so we talked that matter over.

Q. Who was there when you talked the matter over out in the hall? A. Gustav Johnson was there.

Q. And who else? A. Nobody else.

Q. This gentleman here? A. No.

Q. This gentleman here (Mr. Stewart, of Chicago, Ill.)? A. No.

Q. Or Mr. Bashford or Mr. Sanborn? A. No.

Q. What makes you think you were mistaken about John Johnson having been in Superior? A. Because I was not certain and when he said he was not there when he was there, then I think I must be mistaken, because Wallmark and I was there the whole time.

Q. You think you are mistaken then because Wallmark says you are? Is that it? Is that right, Mr. Johnson? You think you are mistaken because Wallmark said so? A. Yes. That is the reason because I can't exactly tell myself if he was along or not along.

The above is substantially all the testimony of Israel Johnson.

The defendants took the deposition of Otto Wallmark in regard to this same group of pre-emptions. (R. 206–234.) Mr. Wallmark has held various public offices in his county, and was State Senator for two sessions of the legislature of Minnesota, and county auditor for Chisago county for twenty years. He was a delegate to the National Republican Convention of 1872. (R. 208.)

A witness called by the United States, Judge Shaleen, testified that Andrew and Otto Wallmark are men of the highest standard of character, character above reproach, and that Andrew Wallmark was out of health and was so old that his memory was somewhat impaired. (R. 352.) Otto Wallmark testified positively that he made his pre-emption for his own benefit, paid his own money for the pre-emption; the money was not furnished him by Mr. Stinson or anybody else; had no negotiations with Stinson, or any one representing him for the purchase of land for him or the sale to him, prior to proving up. He further stated that the other men went up with him, and that he never heard any of them mention that they were going to sell their pre-emptions; that to his knowledge there was no understanding between any of them for the sale

of their land to Stinson or to anyone else prior to the time of their proving up to land in Hudson; that they never uttered a word about selling or anything of the kind; the pre-emptors were all together daily, both coming up and going down during the time they were on the land. He was not solicited by any one to go there and enter land, nor did he act under the direction of any person in doing so. (R. 214.)

In addition to this situation of the testimony, the bill requires the defendant to answer under oath. He did so, fully meeting all the charges of fraud with a full and explicit denial. The weight to be given to the answer as evidence has already been stated and the authorities cited.

In *Slessinger v. Buckingham,* 8 Sawyer, 469, 17 Fed. Rep. 454, Judge Sawyer calls attention to the weighty burden under which a complainant labors when, instead of waiving an answer under oath, he calls upon defendant to furnish evidence in the case, in a sworn answer. He points out that when examined orally as a witness *defendant counts only one;* but when his evidence is called for under oath in the answer, *he counts two.*

Not only does the defendant James Stinson answer fully, clearly and explicitly denying all charges of fraud, but he denies them with equal explicitness in his oral testimony, taken by complainants. (R. 186 *et seq.*)

The only testimony which can possibly support the bill in any way is that of Israel Johnson to the effect that John Johnson told him in the Swedish language, which Stinson could not understand, that "they" wanted him to go up to Superior to pre-empt land for them, and being asked leading questions, he further stated that Johnson and Stinson talked together and after that Johnson talked to him. As we shall see further the testimony necessary to set aside a patent must be clear, unequivocal, and convincing, and this cannot be done upon a bare preponderance of evidence, leaving the issue in doubt. There must be

full proofs, clear, convincing and unambiguous. Nor would the testimony of Israel Johnson affect the entry of any other person. Such testimony, even if sufficient to set aside the Johnson pre-emption, would simply cast a mere suspicion upon the other entries in the same group. In such case proof that one entry was unlawful would not be full, clear and convincing proof necessary to affect the others. *United States v. Budd,* 144 U. S. 155.

In regard to the third group, therefore, we think the explicit denial of Mr. Stinson equivalent to two witnesses. We have the positive testimony of Otto Wallmark in our favor, we have the fact that the government did not call Gustav Johnson, Andrew Wallmark or Ole Westerland, as against the testimony of Israel Johnson, professedly confined to his own case, with the express statement that it is so long ago that he can't tell what was said. It is submitted that a weaker case to set aside a patent which has stood more than forty years can hardly be conceived.

The testimony of Mr. Gibson, hereafter stated, shows that he drew some of the pre-emption papers of three of the six belonging to this group. He cannot remember how he came to do so, or anything clearly relating to the transaction. He says he drew the original affidavit of Otto Wallmark, who testifies positively that there was no agreement whatever with Mr. Stinson. He also drew the original affidavit of Peter Norrell, who testifies with equal positiveness that there was no such agreement.

Argument as to the second group. The second group of pre-emptors made their settlements in the latter part of September, 1854, and proved up October 24, 1854. They were five in number. Of these five, three are dead and two are alive. Both of the living pre-emptors were examined, Lorens Johnson on behalf of the government and Peter Norrell on behalf of the defendants. Lorens Johnson was also examined in the year 1895 in an action brought by the widow and heir of another of the pre-emptors, being Andrew Swenson or Andrew Ogren, as he

was sometimes called. In the testimony taken in the Ogren case, Mr. Johnson testified substantially as follows: "I did not enter on the land to sell it on speculation but to devote it to my own use. I had not made any agreement or contract by which the title I might acquire should inure for the benefit of any other person. I had made no contract or bargain to sell to any person, nor for any person, the land nor any part of it. I had not at any time made, and did not make any agreement or understanding with James Stinson or any other person, that the entry was for his benefit or of any other person, except myself." (R. 699.)

Lorens Johnson was examined in this suit in 1898 on the part of the government, and testified substantially as follows (R. 98 *et seq.*).

Q. Did you do anything about taking up any land in Douglas county, Wisconsin? A. Yes, sir.

Q. Who first spoke to you about it? A. John Johnson, I guess.

Q. Where? A. At Taylor's Falls.

Q. Was anybody with him?

John A. Larson, sworn as Swede interpreter.

Q. Was anybody with John Johnson when he spoke to you about taking up this land? A. No.

Q. What did John Johnson say? A. He didn't say nothing except he wanted me to go to work by the month—$30.00 a month's wages.

Q. Where did he want you to work? A. Up at Superior.

Q. For how much a month did you say? A. $30.00 a month.

Q. What did he say about taking up the land? A. He didn't say anything particular about that, but we should take one hundred and sixty acres each.

Q. Whom do you mean by he? A. Stinson.

Q. What Stinson? A. James Stinson.

Q. Did you see James Stinson? A. Yes. He was there.

Q. Where? A. In Superior.

Q. And what did Stinson say to you? A. (By Interpreter—He says he didn't understand what Stinson says. It was only Johnson that talked to him about it.)

Q. Were Stinson and Johnson together? A. Johnson was hired just like me from Stinson.

Q. How do you know that? A. He said so himself.

Q. Who said so? Do you know that Johnson was hired by Stinson? A. He hired him just the same as the rest.

Q. How do you know that? A. I was at Taylor's Falls when he hire him.

Q. Were Stinson and Johnson together when these men were hired at Taylor's Falls? A. Yes, sir.

Q. Now you didn't speak English then did you? A. No.

Q. Did Stinson speak to Johnson? A. Yes.

Q. And then did Johnson speak to you in Swedish? A. Yes.

Q. When Johnson spoke to you in Swedish he hired you at $30.00 a month? A. Yes.

Q. Now who went over to Superior with you? A. It was an Indian that went with me.

Q. You remember the time in Taylor's Falls when you were hired? A. I think it was in '54.

Q. Now when you were there in Taylor's Falls was anything said to you about doing what John Johnson told you to do? A. I did not know what they were going to do until I was hired to go to Superior.

Q. Who was to tell you what to do? A. Did not know that before we got there.

Q. When you got there did you find it out? A. Yes.

Q. What did you find out then? A. Went to work to lay out the streets.

Q. Who told you where to go on the land? A. John Johnson.

Q. What did you do on the land? A. We built cabins—shanties.

Q. How much land did you settle on? A. One hundred and sixty acres.

Q. What kind of a cabin was it? A. It was made of chunks, six feet long. It was just a little shanty.

Q. Any roof on it? A. They put on brush for roof.

Q. Did you live in that shanty? A. No.

Q. How long were you building it? A. About two or three hours.

Q. Now these other men that went over there with you, did they have claims like yours? A. Yes, same thing.

Q. How many acres did they lay claim to? A. I don't know

anything about that, but I suppose they took one hundred and sixty.

Q. Did they use their shanties? A. We helped each other to build shanties—shanties all alike. We were not particular about it.

Q. How long did you stay in Superior? A. Two months.

Q. Were you paid for your time over there? A. I was not paid until I came to Taylor's Falls.

Q. Were you paid when you came to Taylor's Falls. A. Yes.

Q. How much? A. Thirty dollars a month and was for two months.

Q. What did you do in Superior when you were there? A. They built a pile driver on the lake there and then cleared the streets.

Q. Did you see Stinson over there. A. Yes, he was there all the time. He went with us down to Superior.

Q. Went with you from Taylor's Falls to Superior? A. No.

Q. What do you mean, that Stinson went to Superior with you? A. He said when he left us that we should meet him in Hudson ten days after.

Q. Where did you leave Stinson? A. In Taylor's Falls.

Q. Then did Stinson come down from Superior to Taylor's Falls with you? A. Yes, we were all together.

Q. John Johnson too? A. Yes.

Q. Who told you to meet Stinson in Hudson ten days afterwards? A. He said that himself.

Q. Well now, where did you go from Taylor's Falls? A. I went to Chisago Lake.

Q. Did you go to Hudson? A. Yes.

Q. In about ten days? A. Yes, just ten days.

Q. Who went down to Hudson with you? A. All of them that was up there.

Q. Who were they? A. Some of them dead that went up with us at the time.

Q. Yes, I know, but tell the names? A. John Johnson, Peter Norrell, Peter Magnus, one by the name of Alstrom. They are dead so I forgot the names of them.

Q. How many were there together? A. I think there was just about fourteen.

Q. Now when you got down to Hudson did you see Stinson there? A. Yes, he met us there.

Q. Now what did you do at Hudson? A. I was at the land office and signed the deeds.

Q. Who was there with you? A. Stinson.

Q. Now did you get any money there? A. Yes, I got ten dollars when I went to Hudson.

Q. Who paid that money? A. Stinson.

Q. Stinson himself? A. Yes.

Q. Were you all together when it was paid? A. I can't recollect.

Q. Did you see it paid to some of them? A. I can't recollect that but I know that he paid me.

Q. Did you see him pay anybody else? A. No.

Q. Who made out the papers? A. I don't know.

Q. Did you pay any money to the land office? A. No.

Q. Who paid the money to the land office for you? A. I don't know, I didn't see anybody.

Q. Whom did you understand paid the money to the land office? A. I don't know.

Q. Do you remember the description of the land which you entered? A. No.

Q. Well, you did not enter any land there except once did you? A. No.

It is conceded by the counsel for the defendants that the description of the land entered by or in the name of Lorens Johnson was the Northwest quarter (N. W. ¼) of Section 33, Township 49 north, Range 14 west, Douglas county, Wisconsin.

Q. In Superior, were these men that went down there with you working on the streets and on the pile driver at the time you were? A. All of them. They had their own camp and lived in it. All together.

Q. How long did you stay on your claim up there? A. I was there when I built the camp and it took me about a couple of hours.

Q. The others the same way? A. Yes.

Q. Did he pay you at Hudson the thirty dollars a month? A. He paid me at Taylor's Falls before we went to Hudson.

Q. Stinson? A. Stinson himself paid me.

Q. Was this John Johnson who filed a claim a married man? A. No.

Q. Was there a John Johnson who filed a claim a married man? A. There was a man by the name of Hellene (Helleen) that they may have called Johnson, but I could not say for certain. This man Helleen was a married man.

Q. Where was your family living? A. Chisago Lake. Ogren

was also a married man. His family lived at the same place that I lived, Chisago Lake.

Q. Why did you go out on that claim near Superior? Who told you to go out? A. Mr. Stinson.

Q. Did Stinson go out on the land with you? A. Yes.

Q. Anybody else? A. The whole crew.

Cross-examination. On the cross-examination the witness testified that no one but Johnson talked to him about taking land. Stinson and Johnson went with him on the land. Did not stay a night in the shanty. It is pretty hard to recollect so long ago whether he slept in the shanty or not. Did not testify in the Ogren case that he did not enter the land to sell on speculation but for his own use. Did not enter it to sell on speculation.

Q. What did you take land for? A. For a month's wages. Did not testify that I had not made any contract or agreement by which the title was to inure to any other person, nor that I had no contract or agreement not to sell to any other person. *Did not have any bargain with Stinson to sell the land to him before I made the entry.* Did what Johnson told me. I did not pay for the entry, and don't know who did.

Evidence of Peter Norrell. On the part of the appellees the testimony of Peter Norrell, the only other pre-emptor now living in the second group was taken. Mr. Norrell testified that he went up to Superior about the middle of August, 1854. The record shows that he made a settlement September 27, 1854. He says he built a shanty, cut some brush, and built a little kind of a fence, and planted a few beans. He slept in the shanty and made a door and a smoke hole, and cooked, ate and slept in there. (R. 242, 243.) That he first saw Stinson at Superior but did not see him until after he had been on his claim and made his shanty. Stinson went down with the party from Superior to Taylor's Falls. That he was told that they were going to pay the money afterwards, and he did just the same as the others as he could not understand any English. He did not sell the land to anybody, nor take it up for anybody else except him-

self. "Just what I done it for was my own use." Did not have any agreement with Stinson nor anybody that he should take up the land for him or anybody else at any time. (R. 246, 247.) On cross-examination he stated that ten or twelve years before, a man by the name of Streeter called to see him, after he had learned to speak English. The date of this interview, as shown by the affidavit of Peter Norrell, was November 14, 1887. (R. 355.) He testified that Streeter told him he was going to help him get back the land. They went before Mr. Shaleen, clerk of the court, and he signed and swore to a paper before him. The paper being produced the witness identified his signature, and further testified that Streeter did not read it right to him; that he jumped across the lines where it says "I got my own shanty there, then he jumped across, he jumped over that." Witness told Shaleen to read it over and Streeter took it and looked around and said "Oh, that is all right" and Streeter said he wanted to help us get the land back. "And about three or four weeks afterwards, I see myself in the newspaper, he put it into the newspaper, and it say there them fellows went up there to Superior and enter that land, pre-empted land, about forty years ago, so long ago,—they going to go up there, they got the right to go up there now and build a shanty, and they own the land. That is what I see in the paper, a Swede paper, my paper. He had it put in there." Streeter further told him that Stinson got it "and now he is going to get it from Stinson, and let us have it back." He did not say anything only, "I am going to help you get the land back, it was all a swindle that Stinson done." (R. 268–271.)

The evidence of Moses S. Gibson relates more particularly to this second group of pre-emptions, and is therefore stated at this point. It is in substance as follows:

The testimony of M. S. Gibson. At the time his testimony was taken Mr. Gibson was 76 years of age, and had had sickness which affected his memory. He stated that it was very difficult

to recollect the matters about which he was questioned. He could not remember whether he talked with the Swedes whose affidavits he made out, nor whether there was an interpreter present. (R. 54, 55.) He can't recall whether he talked with Mr. Stinson about the matter. (R. 55.) The only thing he could recollect was that in the fall of 1854 he was requested by Mr. Stinson, after he had started across the St. Croix lake, to return with him to Hudson to make out some papers, and that he did so and was paid $20 for it by Stinson. He also states that many of the papers in the three groups of October 24, 1854, June 1, 1855, and June 22, 1855, are in his handwriting, although some of them were written by others. (R. 46–54.) It also appears that Mr. Gibson was a business partner of Mr. Henning, the register of the land office in the banking business, and did business in the same building, and on the same floor, as the land office. Also that a large number of entries were made in those days, and the work of making out the papers was quite laborious. (R. 52.) While he thinks he did not make out preemption papers unless requested by some one outside the office, yet he says that he don't know about it, and could not recollect these if he had not seen them. (R. 50, 51.) He was the only person in that locality who could take acknowledgement of deeds. (R. 53.) He cannot remember, but can only give impressions. (R. 54.)

Mr. Gibson, on cross-examination, corroborates the testimony of Mr. Stinson and other of appellees' witnesses that there was no understanding or agreement for the sale of the lands prior to the acquisition of title by the entry men. He says (R. 55):

"Q. You said that Mr. Stinson seemed to be doing something about directing or controlling these men. Just state what you can recollect clearly as to what you saw him do. A. After they had made their proof, and got their duplicate receipts, I saw him talking with them by themselves.

Q. After that? A. After they got the duplicate receipts.

Q. You did not see him talking with them before that? A. No.

Q. That is all you saw which led you to think he had anything to do with them? A. That is what made the impression on my mind.

Q. That is all you saw? A. Yes; I didn't see anything else except seeing him in conversation with them.

Q. That was after these papers had been made out, that you speak of? A. After the duplicate receipts had been given to them.

Q. You have had some sickness that affected your head in some way? A. Somewhat, sir. It affected my memory to some extent. It was an abcess. I took cold at the time of Harrison's inauguration."

This testimony was given forty-two years after the transactions, by a man 76 years of age, whose memory was impaired by sickness, and who says it is very difficult to recollect anything. Is this evidence clear, unequivocal and convincing, sufficient to set aside patents which have stood nearly half a century? Suppose everything Gibson says impeaching the transaction be accurate and true, what does it amount to? Assume he was hired to do some business for Stinson in 1854. He did make out five deeds for Stinson October 24, 1854. In this there is nothing even suggesting anything wrong. He does not say he was hired by Stinson to make out pre-emption papers, but suppose he had been? These questions are all answered by the case of *United States v. Budd,* 144 U. S. 155. That was a case to set aside a patent of timberlands, and was brought against Budd and Montgomery. It appeared in proof that Montgomery had purchased about 10,000 acres of timberlands in the same locality, and that the names of the witnesses in each case were the same. Deeds were taken by Montgomery within a few days after the payment to the government, and these deeds showed only nominal consideration. The land was very valuable, the tract in question being worth $5,000. Neither Budd nor Montgomery took the witness stand. Budd stated that he did not know that he had ever seen the land. Long after his conveyance

to Montgomery, he stated that he had not sold it, but still held it, and that the land was "in soak." It was also shown that in two other cases relating to two other tracts of land, Montgomery promised to give the entryman $100 to $125, besides expenses, if they would take up timber claims for him in that vicinity. The court say (144 U. S. 162–165):

"The particular charge is that Budd, before his application, had unlawfully and fraudulently made an agreement with his co-defendant, Montgomery, by which the title he was to acquire from the United States should enure to the benefit of such co-defendant. Upon this question the fact that stands out prominently is that there is no direct testimony that Budd made any agreement with Montgomery, or even that they ever met, or either knew of the existence of the other, until after Budd had fully paid for the land. No witness ever knew or heard of any agreement. What, then, is the evidence upon which the government relies? It appears that Montgomery purchased quite a number of tracts of timber lands in that vicinity, some ten thousand acres, as claimed by one of the witnesses; that the title to twenty-one of these tracts was obtained from the government within a year, by various parties, but with the same two witnesses to the application in each case; that the purchases by Montgomery were made shortly after the payment to the government, and in two instances a day or two before such payment; that these various deeds recite only a nominal consideration of $1; that Budd and Montgomery were residents of the same city, Portland, Oregon; that one of the two witnesses to these applications was examining the lands in that vicinity and reporting to Montgomery; and that the patentee, Budd, years after his conveyance to Montgomery, stated to a government agent who was making inquiry into the transaction that he still held the land and had not sold it, but that it was "in soak." But surely this amounts to little or nothing. It simply shows that Montgomery wanted to purchase a large body of timber lands, and did purchase them. This was perfectly legitimate and implies or suggests no wrong. This act does not in any respect limit the dominion which the purchaser has over the land after its purchase from the government, or restrict in the slightest his power or alieniation. *All that it denounces is a prior agreement, the acting for another in the purchase. If when the title passes from the government no one save the purchaser has any claim*

upon it, or any contract or agreement for it, the act is satisfied. Montgomery might rightfully go or send into that vicinity and make known generally or to individuals a willingness to buy timber land at a price in excess of that which it would cost to obtain it from the government; and any person knowing of that offer might rightfully go to the land office and make application and purchase a timber tract from the government, and the facts above stated point as naturally to such a state of affairs as to a violation of the law by definite agreement prior to any purchase from the government—point to it even more naturally, for no man is presumed to do wrong or to violate the law, and every man is presumed to know the law. And in this respect the case does not rest on presumptions, for the testimony shows that Montgomery knew the statutory limitations concerning the acquisition of such lands, and the penalties attached to any previous arrangement with the patentee for their purchase. Nor is this a case in which one particular tract was the special object of desire, and in which, therefore, it might be presumed that many things would be risked in order to obtain it; for it is clear from the testimony that not the land but the timber was Montgomery's object, and any tract bearing the quality and quantity of timber (and there were many such tracts in that vicinity) satisfied his purpose. This is evident, among other things, from the testimony of one Tippery, upon which some reliance is placed by the government, which was that Montgomery offered him $100 besides all his expenses if he would take a timber claim in that vicinity (no particular tract being named) and afterwards sell to him. The government relies also on the testimony of Edward J. Searls, that Montgomery promised to give him $125 and all costs and expenses, if he would enter a tract of timber land and convey to him, and that thereafter Montgomery advanced the money for the payment to the government, and subsequently, on receipt of a deed, paid him the $125. If it be conceded that this testimony as to another transaction be competent in this case, and there be put upon the testimony the worst possible construction against Montgomery, to the effect that he made a distinct and positive agreement with Searls for the purchase of a tract which the latter was to enter and obtain from the government, and so a transaction within the exact denunciation of the statute, still that testimony only casts a suspicion on the transaction in question here, and suggests the possibility of wrong in it. Because a party has done wrong at one time and in one transaction, it does not necessarily follow that he has

done like wrong at other times and in other transactions. Suppose in each of the twenty-one cases specified in the testimony the government had filed a separate bill making the patentee and Montgomery parties defendant, and charging in each, as here, *a prior unlawful agreement*, and in twenty of them the patentees and Montgomery had each answered, denying under oath any prior agreement, while in the twenty-first they had likewise answered, admitting in full as charged the making of such an unlawful agreement; would the admission in the case be adjudged, in the face of the denial under oath in the other twenty, clear, full and convincing proof that in those cases likewise there was a prior unlawful agreement? And yet such admission of both patentee and Montgomery would be stronger and more satisfactory evidence than the separate testimony of the patentee. And this is all the testimony which in any manner points to wrong in this transaction. Surely this does not come up to the rule so well established as to the necessary proof in a case like this."

To same effect is the case of *Colorado Coal Co. v. United States*, 123 U. S. 307.

Mr. Stinson testified that the men who made these entries or some of them, were employed by him through John Johnson for the Town Site Co., but he was not able to state when or how they were paid or the amount paid to each, or the money transactions with them or with John Johnson or with Mr. Gibson or the Town Site Co., for the reason that his books were destroyed in the Chicago fire. (R. 170.) He cannot state who negotiated the purchase of the claims of these men, whether himself, Gibson or Johnson, but he swears positively that he had no understanding with any of them for the purchase of the land before final proofs had been made at Hudson; that the subject was never mentioned at all; that he is sure none of the purchase price was advanced to any of them before proof had been made; that he had never made any arrangements with them himself and had never authorized Johnson or Gibson to make any arrangements with them before such proofs had been filed, and that he never authorized Johnson or Gibson to advance any money to them before that time. "Q. Did you ever have any

arrangement or understanding with those men at any time for the purchase of their claims before they had made proofs of their claims at Hudson? A. I know there never was any arrangement to my knowledge. Q. Had you learned before you went to Hudson in 1854 to settle with these men that they desired to sell their claims, which they might obtain from the government? A. I had not learned." (R. 189.) "Q. In respect to the claims you bought in 1855 I will ask you whether or not you had any understanding with any of those men before they had proved up their claims, with respect to the purchase of those claims. A. With none of them. There never was any understanding about purchasing until the entry was made. Q. Had you before the entry was made furnished any money yourself personally to these men to make payment to the government? A. I had not." He says that before these entries were made he had no agreement or understanding with respect to the purchase of these claims and that no money was advanced in expectation or in anticipation of their purchase by him, and that he had not authorized any such advances to be made. "Q. But in respect to all these transactions and in respect to each of them I understand you to say that you had no understanding or agreement for the purchase of the claims before the claims were proved up? A. Most decidedly not. There was never any understanding before the entry was made." (R. 189.)

III.

THE ENTRIES IN QUESTION ARE WITHIN THE TRUE INTENT AND SPIRIT OF THE PRE-EMPTION LAW OF 1841. THE EVIDENCE SHOWS THAT NO FRAUD WAS COMMITTED.

Not only is the evidence of fraud exceedingly weak, as we submit, but the true spirit and purpose of the pre-emption law was in no manner violated or defeated. The United States received the lawful price for the land. Four of the entries were proved up eleven days after settlement on the land. It took six

days to travel from Superior to Hudson, leaving only five days for settlement, improvement and cultivation. To say that the officers of the United States were deceived as to the nature of the improvements and habitations requires a considerable stretch of the imagination. What kind of a dwelling-house can be erected in five days?

But we insist that the settlement and improvement were sufficient to satisfy the policy of the law, when applied to lands unfit for cultivation or homes, as these lands were, and that this is the true construction of the pre-emption law.

It is claimed by counsel that the policy of the pre-emption law is to procure a home for the settler. We take issue squarely with this proposition, and say that the policy of the pre-emption law, especially as interpreted in 1854–1855, was to prevent speculation, and apply the land to the exclusive use of the settler, either as a home, or in some other way. There are some loose expressions in the books to the effect that the policy of the pre-emption laws was to make a permanent home for the settler, but they are not supported by the history of the legislation or the decisions of the courts. The language of the pre-emption law does not justify any such construction. It is as follows:

"Every person . . . who shall hereafter *make settlement in person* . . . and who shall *inhabit* and *improve* the same and who has or shall erect a dwelling thereon, . . . shall be authorized to enter."

"He or she shall make oath . . . that he or she has not settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit," and has not made any agreement, etc.

Pre-emption act of September 4, 1841, secs. 10, 13.

There is nothing here requiring either personal residence or any definite term of inhabitancy, and such was the interpretation given by the attorney-general of the United States. Two opinions were given at the request of the secretary of the treas-

ury upon the proper construction of the pre-emption act of June 19, 1834, providing that—

"Every *settler* or *occupant* of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof in the year 1833, shall be entitled" to pre-emption. 4 U. S. Stat. 678.

The attorney-general gave it as his opinion, for the guidance of the officers of the United States, that actual residence on the land was not indispensable. 3 Op. 182, 309. The only substantial difference between the acts of 1834 and 1841 is that by the latter the claimant is required to erect a dwelling. There is nothing whatever in either act which requires the claimant to establish his residence on the land for any definite time, or to make his home in a tamarack swamp, bog or marsh, but he must settle, improve and build a house, and must *inhabit* the tract, that is, go upon it, but not for any length of time. Congress must be supposed to have understood that vast tracts of the public lands, like the tamarack swamps at Superior, and the marshes upon which the city of Chicago was built, were absolutely unsuited for homes, or permanent residence. But such lands because of their situation on great rivers or lakes might attract people, who might settle upon them with a view to their purchase; and it was to protect such settlers against men who could outbid them that the pre-emption act was passed.

A moment's glance at the history of pre-emption will show that the object of the pre-emption laws was to prevent speculation, and secure the land to the exclusive use of the settlers, but not to compel them to make homes in bogs, swamps or marshes. The plan of disposing of the public lands was this: After survey the president's proclamation offered either all or a part of the public lands in any land district for sale at public auction to the highest bidder. The sale remained open for two weeks only. After this all the lands so offered were open to private cash entry until they were all sold. If any particular locality

had attracted squatters or settlers, whether it was suited for agriculture or was thought to be valuable because of its location on some navigable river or lake (though perhaps unfit for cultivation or permanent residence), such locality would be excepted from the proclamation offering lands for sale at auction. The lands so reserved from public sale were then known as "unoffered" lands, subject only to pre-emption, and those so put up as "offered" lands. When the demand for such unoffered lands had become satisfied by pre-emption sales, the balance of the lands not included in the proclamation were then offered at public sale, and after the two weeks' period became subject to cash entry. This statement of the practice is substantially shown in the Revised Statutes, secs. 2353–2366.

Leaving out of view railroad grants, private grants, timber and stone entries, mining entries and scrip locations, three systems of disposing of the public lands have been in use, (1) by public cash sale, followed by private cash entry, (2) pre-emption entry, and (3) homestead entry. The cash entry system was in practice from the beginning of the government until 1891, the pre-emption system from 1841 to 1891, and the homestead system from 1862 to the present. The object of the cash system was to *dispose of* the public lands, of the pre-emption system to protect settlers from speculators and secure the lands to their *exclusive use,* and of the homestead settlers, as Mr. Seward said in the senate of the United States: "To secure *homes* for the landless freemen of the United States." The primary object of the pre-emption law was not to secure homes for the claimants, but to protect squatters, pioneers, and first settlers against the power of men who had money.

The great body of the public lands, outside of land grants and mineral lands, have been sold at cash entry. The pre-emption law has been of very limited application, being generally confined to the sites of future cities, to a great extent unfit for agriculture. No greater perversion of its true spirit and purpose

would have been possible than to compel the making of a permanent home on the land. The interest of the pioneer or first settler, and his protection from the power of money and speculation, by securing the land to his own exclusive use, *either by residence or sale*, was the great purpose of the law.

The history of the pre-emption laws thus shows clearly what their object and purpose were. Prior to the act of September 4, 1841, under which these entries were made, no general pre-emption law had been adopted. A number of special acts had been passed, all retrospective in their nature, for the benefit of squatters or pioneers who had settled in certain localities before the land was surveyed. There being no pre-emption law, no act securing to them the benefit of their prior occupation, as soon as the land was put up at auction other persons would outbid them, and secure the land they had settled upon, and whose value they had enhanced. Special acts were therefore passed by congress giving such settlers pre-emption rights, but such acts were limited to the past, and were in no way prospective.

It was found, also, in the administration of these acts, that speculators, in anticipation of their passage, would procure persons to occupy valuable lands for their benefit, agreeing to convey to them, pay them for their occupation, and as soon as they made final proof would take conveyances from them. In order to prevent such speculation, and at the same time to cut off the opportunity for persons to outbid actual settlers at auction sales ordered by the president, and to secure the land to the *exclusive use* of the pre-emptor, the act of 1841 was passed.

Myers v. Croft, 13 Wall. 291.

The following special pre-emption acts were passed prior to 1841:

March 25, 1816. 3 Stat. 260.
March 3, 1817. 3 Stat. 393.
April 20, 1818. 3 Stat. 450.

May 29, 1830. 4 Stat. 420.
March 2, 1833. 4 Stat. 663.
June 19, 1834. 4 Stat. 678.
June 22, 1838. 5 Stat. 251.
June 1, 1840. 5 Stat. 382.

These considerations show why the president did not order by proclamation that these lands at Superior should be "offered," that is, put up for sale at auction for a limited time, and then offered for cash at private entry. The lands in the vicinity of Superior had attracted numerous settlers who thought that this point was destined to be a large city. Judge Nelson describes in his testimony the town-site company, composed of himself, Col. Robertson, D. A. J. Baker, James Stinson, Granger, Senator Hunter, of Virginia, Cochran, of Washington, Nettleton, Newton, Thompson, Edmund Rice, Cass, Walker, George L. Becker and others. (R. 464, 465.) Many other persons were desirous of entering lands there, and claims were made as fast as the survey was completed. Testimony of Stuntz, 129. Therefore, in order to protect the rights of prior settlers, and enable them to devote the land to their own exclusive use and benefit, these lands were allowed to remain as "unoffered lands," subject only to pre-emption.

But the lands in question were from two and a half to five miles from the town-site, or settled part of the locality. (R. 370.) They were good for nothing for argriculture, and the same is true to-day. Hence, the only possible use they could be put to from the standpoint of the pre-emptor was to sell them, at a price in advance of that paid. Suppose one of these claims had been suited for an addition to Superior city or village, and could have been sold for that purpose at a considerable advance over the government price. Obviously, this might have been the very best use to which it could be devoted. Thus, the spirit and true purpose of the pre-emption laws were fully subserved by the sale of these lands to Stinson. No one was defrauded. He

held the lands more than forty years, paying taxes on them amounting to $72,848.47. (R. 277–291.) The lands were thus placed in the precise situation and condition they were designed to be, that of becoming a portion of the domain of the state, and bearing their share of the public burdens, ready for improvement and sale when the proper time should arrive. Neither the government nor the pre-emptors were injured in the slightest degree. The latter received its price, and the former all the benefit possible. To say that a fraud was committed under these circumstances is a monstrous exaggeration.

Secretary Teller, in his circular of 1883, speaking of frauds under the land laws, says that persons securing lands by fraud on the government rarely hold them long, because it is desired to place them in the hands of innocent grantees, against whom the fraud cannot be urged. 4 Pub. Dom. 537. But here Mr. Stinson did not act as if he had committed a fraud. He held the lands and paid his taxes, year after year, until this attack was worked up by an interested adventurer. It is respectfully submitted that the record shows not the slightest proof of any fraud, but rather transactions beneficial to all concerned.

It is argued that there was a speculation in these lands because, it is said, they were worth more than Stinson paid for them, but of this there is not the slightest evidence. The testimony of James Bardon is cited to sustain this point. He did not go to Superior until July, 1857, nearly three years after the first pre-emptions were made. He does not pretend to set a value on them until 1857, and then only in a general way. (R. 273.)

The pre-emptors obtained the full benefit of their claims.—The evidence clearly shows two things: (1) the absence of any agreement by any of the pre-emptors to sell his pre-emption right, and (2) that each one obtained the full benefit of his pre-emption. The act of 1841 required an affidavit that the claimant had not "settled upon and improved said land to sell the

same on speculation, *but in good faith to appropriate it to his or her own exclusive use or benefit.*" Mr. Gougé, witness for complainants, testifies that the country in which these pre-emptions were made was "very thick tamarack woods," very wet, and it was the same all through there, no drainage (except near the creek and river), and no roads. He says he lived on one of the claims for some years and used up the money he had. "Where the people lived on their claim they could not make a living on them." The climate is cold, wet and stormy, and the soil red clay. "They would live on the claim a year or so, and then go off. When they prove up they go off." (R. 365, 366, 369, 372.)

The court will take notice of the fact that the whole country from Green Bay to St. Paul was in 1854 and 1855 an almost impenetrable wilderness. The only settlements north of St. Paul were at Taylor's Falls and Superior, and these were small and unimportant. Even if this land had been suitable for agriculture, yet there were no railroads and little traffic on the lakes. The lands were utterly unsuited for places of abode. Even now there is little agriculture in that part of the state.

What purpose, then, was this land suited for? The government offered it for pre-emption entry, and received the money for it. Presumably in so offering the land it intended it for any use to which it was suited, and not one to which it could not, in the nature of things, be adapted. There was only one possible use to which the land could be devoted, and that was to either hold it for commercial purposes or sell it to others who could do so. The only legitimate use to which it ever was or ever can be adapted is for business or residence purposes connected with a commercial port situated, as Superior is, on a great waterway.

The pre-emptors were to devote the land *to their own exclusive use or benefit. This they could only do by selling it.* Hold it they could not. The only way they could possibly get

anything out of it was to sell and convey it. The following table shows what was paid by them and what each received, and it is undisputed:

Pre-emptor.	Acres	Gov't Price.	Price Received.
Sven Larson	160	$200 00	$260 00
Gustav Johnson	145	181 25	270 00
Israel Johnson	172 88	216 10	270 00
John Johnson No. 1	160	200 00	275 00
John Johnson No. 2	161 60	202 00	290 00
Lorens Johnson	160	200 00	250 00
Martin Larson	170 75	201 00	290 00
Sven Magnusson	162 22	202 77	300 00
Peter Norrell	160	200 00	250 00
Aaron Peterson	172	215 00	275 00
Andrew Svenson	160	200 00	270 00
Andrew Wallmark	173 57	216 96	270 00
Otto Wallmark	142 78	178 47	270 00
Ole Westerland	173 59	216 98	270 00
		$2,830 53	$3,810 00

Thus, these fourteen pre-emptors received $980 more than they paid for their lands, being on the average of $70 apiece. If there was any other purpose to which this land could have been devoted, counsel in their most elaborate and able brief have failed to point it out. Assuming for the sake of argument (though not admitted) that the improvements and residence were insufficient to make valid pre-emptions as to the pre-emptors themselves, yet the evidence fails to show that Mr. Stinson knew their character; and when it most clearly appears that the pre-emptors devoted the land "to their own exclusive use or benefit" by doing the only thing possible to obtain any benefit whatever from the pre-emption, we submit that all real or substantial reason for setting aside these patents ceases to exist.

In *Myers v. Croft,* 13 Wall. 291, a pre-emptor conveyed his claim the same day he received his certificate to a person under whom defendant claimed, and two years later, after the patent issued, conveyed the same land to plaintiff, who brought eject-

ment. It was held that the pre-emption law permitted the conveyance after the issue of the certificate and before the patent, although that law expressly provides that all sales "prior to the issuing of the patent" shall be void. The court further held that the object of the pre-emption law was to prevent speculation. The policy of the government was to prevent "speculation through the instrumentality of temporary settlers." To the same effect are the following cases: *Quinby v. Conlan,* 104 U. S. 422; *Smith v. Ewing,* 23 Fed. 745; *McClung v. Steen,* 32 Fed. 374; *Gilkerson-Sloss Co. v. Forbes,* 54 Ark. 148, 15 S. W. 191; *Thurston v. Alva,* 45 Cal. 17; *Merrill v. Clark,* 103 Cal. 370, 37 Pac. 239; *Ogden v. Walters,* 12 Kan. 296; *Richards v. Snyder,* 11 Or. 509, 6 Pac. 191.

The entryman may mortgage the land, or borrow money to pay for it, before final proof: *Stewart v. Powers,* 98 Cal. 517, 33 Pac. 487; *Norris v. Heald,* 12 Mont. 284, 29 Pac. 1121; *Larson v. Weisbecker,* 1 Land Dec. 422 (Secretary Teller); *Appeal of Ray,* 6 Id. 340; *Haling v. Eddy,* 9 Id. 337; *Jones v. Tainter,* 15 Minn. 512.

Where a deed is made the same day the certificate issues the presumption is that it was made after the receipt or certificate. *Carson v. Railsback,* 3 Wash. Ter. 175, 13 Pac. 618; *Boggan v. Reid,* 1 Wash. 517, 20 Pac. 426.

For illustration, take the case of the present site of the city of Chicago. It was a marsh, an almost impenetrable swamp. The argument of counsel is that before pre-emption rights could attach the pioneers who settled here must *make their homes* in this swamp. No greater absurdity could be imagined. The pre-emption law wisely said nothing about residence or homes, and required only that the land should be devoted to the *use of the claimant,* nothing more.

Counsel further argue that the land officers did not know of the character of the improvements made upon the lands by the pre-emptors, for the reason that they lived one hundred and

fifty miles away through pathless woods. We content ourselves in answering this by saying that several of these pre-emptions were proved up eleven days after settlement, and that six of these eleven days, were occupied in traveling from Superior to Hudson, where the land office was. This left five days in which to settle, clear, cultivate and build a residence, and according to the argument of counsel, make a home. Further comment is superfluous.

There is no evidene worthy of the name in the case, showing that Mr. Stinson knew the character of these improvements, any further than he knew the character of other pre-emption improvements, which were accepted as sufficient, and he states himself that he did not know their character, and that the improvements he saw on other pre-emptions were good and substantial. The court expressly finds that the character of these improvements was known to the land office officials, and that the evidence does not show that Mr. Stinson had any knowledge of their character. (R. 497.)

We submit that the main arguments of counsel are fully met by the consideration that when the government, for the purpose of protecting the rights of settlers, and out of a tender consideration of these rights and for the prevention of speculation, and puts up swamp lands, unfit for habitation, for pre-emption entry, the policy of the law is fully and completely satisfied by having the land devoted to the exclusive use and benefit of the settler, without requiring the enormous inconsistency of compelling the settler to live in a place absolutely unfit for habitation, and the whole purpose and spirit of the pre-emption law was fully complied with, as we insist in this case, by securing to the pre-emptors the only possible benefit from their pre-emptions. Not a foot of the land in question has ever been lived on from 1854 down to the present date, so far as the record shows. What a perversion of the true spirit and purpose of the pre-emption law, to argue that it was intended to secure homes for settlers. Hun-

dreds of millions of acres of the public domain have been disposed of at private cash entry, without any application whatever of the pre-emption law. Here and there throughout the country that law has been applied for the benefit of settlers and to cut off speculation on their entries. Further than this the policy of the law has never gone.

Upon the question of *bona fide* purchase, discussed in the brief for complainants, we simply have to say that the title is in the defendant Bright as receiver. When the patent issued, the title vested in James Stinson by relation and under the covenants in his deeds and he is entitled to the property as a *bona fide* purchaser, if at that time he had no notice of any such fraud or defect as would render the title subject to be set aside at the suit of the government. The court finds that he did not know the character of the pre-emption improvement, and that he was not guilty of any fraud. There is not a syllable of testimony to show that he learned anything about the character of the improvements from the time of his original purchase to the time when the patent was executed. This sufficiently disposes, we think, of the argument of purchase for value. Mr. Stinson has, in every case, two sets of deeds, one given before, and the other after the patent was issued. The second set, however, would be unnecessary, as the covenants in the first deeds would carry title when the patent issued, and would vest in him the legal title to the lands.

A patent relates back to the inception of the title, and conveys the legal title from that time. *Starks v. Starr,* 6 Wall. 402; *Gibson v. Choteau,* 13 Wall. 92; *Shepley v. Cowan,* 91 U. S. 330; *Lessieur v. Price,* 12 How. 59; *Callahan v. Davis,* 90 Mo. 78; *Landes v. Brant,* 10 How. 372.

IV.

THE CIRCUMSTANCES OF THE CASE SHOW NO FRAUD.

There has been no speculation in the lands. James Stinson held them in his own name forty years after entry, paid great sums in taxes, and only sold them for the purpose of raising money to meet pressing necessities and pay taxes, after being tied up for seven years by injunction in suits by the government which failed for want of prosecution. (R. 38, 39.) The purpose of this conveyance is stated in the answer; that Mr. Stinson had been unable to sell the land when it would have brought high prices, by reason of the injunction; that when the suit was dismissed it was a time of great financial depression, and he was pressed for money to pay taxes and business expenses, and he conveyed the land to his son and took mortgages back in order that he might raise money by negotiating the securities. This answer was called for in the bill and is evidence for defendants. (R. 38, 39.)

No positive or direct evidence of fraud appears.

Complainants did not call three of the pre-emptors, whose testimony might easily have been taken.

Two of the pre-emptors testified positively and emphatically that there was no agreement to sell the lands prior to proof and payment.

The pre-emptors obtained the full benefit and advantage of their pre-emptions, to their own exclusive use, in the only way possible under the circumstances.

While the improvement and cultivation shown were small and unimportant, yet they were sufficient to identify each claimant with the land, and the land officers had full knowledge of the facts. They knew that the pre-emptors claimed to have settled, cultivated, improved, cleared, built houses and inhabited the

lands, all within the space of five days. The testimony conclusively shows that improvements generally throughout the same territory were rough and hastily made. The government witness Gougé, whom counsel praise as an honest man, admits to having made improvements on a claim in Minnesota by laying four logs on the ground and sleeping within the enclosure. (R. 370.) This was among the precipices of Duluth, no more fit for cultivation than the swamps of Superior. That these matters were well known to the land officers, as well as the commissioner of the general land office, abundantly appears. Counsel for the government went so far as to give evidence showing reputation as to all these early entries. Thomas A. Hendricks, then commissioner of the general land office, had his attention called, expressly in writing, to charges of fraud in two of these entries. (R. 375.) It is now sought, on testimony of reputation and rumor, to set aside patents of more than forty years' standing, on evidence purely circumstantial.

The evidence of Stinson's connection with the entries is not only weak and inconclusive, but must be taken in connection with the established fact that not one of the witnesses could understand English nor could Stinson understand their language.

Mr. Stinson was a member of the town-site company at Superior. This company was engaged in laying out the village, clearing, building roads, bridges, etc. Labor was in great demand. The Swedes were skilful woodsmen, hardy and strong, handy with the axe. The hiring of men for this work was a necessity, and it was done by Mr. Stinson, through the first John Johnson. After the men reached Superior they were under the direction and control of Wm. H. Newton. (R. 170, 171.)

Where the lands were sold they brought varying and different prices, some more, some less. There was no uniformity of price. Some $980 more than the government price was paid. This fact strongly rebuts the theory of hiring or conspiracy, since if

these pre-emptors had been hired for the purpose they would have been paid some uniform price. Nor did the profit they received tally with their work on the streets at $30 a month.

Mr. Stinson states positively that he did not know the character of the improvements on these claims. (R. 187, 188.)

There is no direct testimony that Mr. Stinson knew what the pre-emption improvements were, except the most general and vague statements of two of the witnesses to the effect that he came out into the woods where the improvements were being made. It appears that the money for the work upon the streets at Superior was paid at Taylor's Falls, not at Hudson.

It further appears that the men who worked the same length of time obtained varying and different prices for their pre-emptions, thus showing no connection between their wages for work on the streets and the disposition of their pre-emption claims.

Mr. Stinson had plenty of legitimate business at Superior by his connection with the town-site company, which was making streets and bridges. This afforded a legitimate purpose for the hiring of these men, labor being scarce.

Taylor's Falls being on the road from Superior to St. Paul, it is natural that Mr. Stinson should travel from Superior to St. Paul in company with any party which happened to be going, as traveling was difficult through the wilderness, and guides and woodmen essential.

If Mr. Stinson had had a contract with these men to pre-empt land or had hired them to pre-empt for him he would not have gone out on the land and publicly pointed out their respective claims or the location of their improvements.

He paid these men in full at Taylor's Falls for their work without knowing whether they would convey to him or not. If he had had a contract with them he would not have taken the chances.

The two witnesses most relied on by the government use the word "pre-empt," if we can believe the testimony. Is it possible that this particular word was ever used and yet the witnesses forget who was in the party?

There is nothing to show that Mr. Gibson was employed by Mr. Stinson to draw affidavits. He could not take them, because they must be made before the register.

We have thus attempted to note the substance of the testimony and some of the inferences which we think ought to be drawn from it, and we submit to the court whether it is not clear that the relief here asked should be denied. When two sets of circumstances appear, one of which is compatible with good faith and another with fraud and dishonesty, the court will presume that the former was the true theory of the parties. And this is especially true after great lapse of time, and, when, as in this case, there was no fraud upon the policy of the law, each pre-emptor having made the best and only proper use which could be made of his pre-emption.

It was no part of the contract of the pre-emptors while they were working on the streets that they should sleep in Superior. They had a perfect right to sleep on the land which they pre-empted. They were not paid for night work. Helping each other, as they testified, they had been working before hours in the morning and after working hours in the evening, spending their time on these lands.

Great stress was laid by counsel for the government upon the testimony that while the men were at work in the woods some one came out and stated that they must go down home, as the work was ended. A moment's thought will not fail to make it apparent that so far from being evidence of a contract or hiring by Stinson to take up land, it is strong evidence to the contrary, and that the real contract and only contract was to work on the streets, What was referred to by the word work?

Did it refer to work on shanties? To say that it did would lead to a manifest absurdity. How ridiculous it would be for some one to go out and tell these men who were working on the shanties that they had done the work or that the work was done on the shanties. The only reasonable interpretation is that the work to which they referred was that which they went up there to do—work on the streets. The time having arrived in that climate when such work must necessarily cease, it would be natural enough for them to be informed that such work was done.

The witness Peterson testifies that Stinson "told the boys not to let anybody else have their claims because he wanted them." Now if this testimony is entitled to any weight at all (Peterson not being able to understand English) it shows that there was no agreement or contract to dispose of the lands, but a mere request not to sell to any other person.

Counsel for complainants cite the testimony of Stuntz, the surveyor, to the effect that Stinson told him "we want to make some investments in lands there," and requesting that the survey should be made quietly.

How a survey of lands could be made "quietly" is, like most other arguments used to break down this title, left entirely to the imagination. How a surveyor walking through the woods with his assistants could do so without attracting attention is not explained in the able brief on the part of the government. But, if this forty-year-old statement is to be taken as an exact and trustworthy account, what does it come to? Nothing more than that the town-site company wanted to acquire lands; not by fraud but by legitimate purchase. Any other inference convicts Judge Nelson, Mr. Rice, Mr. Cochran and other men of high character and wide reputation, of dishonesty, meanness and fraud. And in the same connection Mr. Stuntz says that he did not know of, nor even suspect, any fraud. (R. 130.)

Counsel argue that because it was suggested to the Swedes by John Johnson that they should take out their first naturalization papers, without which they could not make pre-emptions. that preparation was being made for fraudulent pre-emptions. Not only is this not brought home in any way to Stinson, but is consistent with good faith on the part of Johnson, and only fair to the Swedes, to put them in a position where they could pre-empt lands if they so desired.

It is further argued that because a man by the name of Stanner, who was not called as a witness, asked one of the Swedes if he had a claim in Minnesota, and a man by the name of Fox, also not called, told him if he had a claim in Minnesota they didn't want him to go to Superior, Stinson must be guilty of fraud. How clear and convincing! Mr. Pickwick ordered chops with tomato sauce for dinner, and was accordingly charged and duly convicted, of trifling with the affections of Mrs. Bardell.

Counsel further cite the testimony of Lorenz Johnson that he was paid $60 for two months' work at Superior, and $10 for going to Hudson; and argue that because he was paid for the time he took to prove up, this is positive evidence of fraud. The trouble with the argument is that it is based upon false premises. This $10 was paid at Hudson, even if we accept Johnson's statement as true, and not before he went to prove up. And the record conclusively shows that Johnson got $89 from Stinson for his land. In addition to this Johnson and Stinson agree in saying that there never was any agreement to sell the land until the pre-emption right was established. (R. 100, 104, 25.)

The testimony of John Lonquist, claimed to have been one of the pre-emptors, seems to be much relied on in the brief for complainants; but it is the merest hearsay, and so weak and uncertain that it is difficult to understand why counsel attempt to

make anything of it. He says Stinson never said a word to him in all his life, but Stinson talked with a pre-emptor called Ogren, and Ogren told witness that he wanted him to pre-empt land for him. Ogren was also a Swede, and could not understand English any more than Lonquist could. For some reason, it is also insisted by counsel, that Lonquist was one of the pre-emptors, under the name of the second John Johnson, although he does not say that he ever went by that name, and positively asserts that he never entered any land that he knows of or sold any land to Stinson. The trial court, upon the hearing, in the decree found that it did not clearly appear whether Lonquist was a pre-emptor; and that the testimony in support of the bill was of an extremely doubtful, contradictory and uncertain character, several of the witnesses having given contradictory statements, and two or three of them not having been sworn at all, and several being dead. (R. 496.)

The testimony of Gustav Johnson relates to an alleged admission of Stinson made some forty years before the testimony was given. Even if literally true the statement is entirely innocent. Supppose Stinson did agree with John Johnson, for his services in hiring the Swedes to work on the Superior streets, to give him as much land in Minnesota as Johnson had pre-empted in Wisconsin, what of it? But no dependence whatever can be placed upon testimony of language used so long before. The change of a single word might alter the meaning of the whole admission.

The argument in appellants' brief, as to the testimony of Peter Norrell, is equally far-fetched and purely speculative. Peter Norrell stated with the greatest emphasis that he made his pre-emption for his own use, and had no agreement with Stinson or any other person in respect to it. (R. 246.) But an expression of Norrell, who used the English language with considerable difficulty, is seized upon, to build up a conclusion of

fraud. He says two of his associates came to him in the woods, after he had made his settlement, and said "we had to go *down,*" to "go *home,* leave the place and go *home.*" "The work is done." (R. 261, 262.) It is said that this means they had gone through the form of making claims, and the job being complete it was time for them to return home. Now this is very ingenious, and shows that counsel have been thorough and close in their study of the case. But it will at once occur to the court that forty-year-old evidence of the exact language used, in a foreign tongue, by ignorant men, repeated by a witness who uses the English language with difficulty, is a pretty slim basis upon which to rest a decree avoiding patents which have stood nearly half a century. If there was any direct or positive evidence of fraud such slight circumstances might possibly tend to give some color to the other evidence, and confirm the court in its opinion; but where *all* the direct evidence is the other way, as in this case, surely such testimony is too uncertain to be of any, even the slightest, weight. And, as we have already seen, the word work naturally referred to the work on the streets. It was late in the fall, and the street work, in that climate, would naturally be about over. Even if the exact language be taken as clearly proven still the inference to be drawn is not clear or direct, but merely speculative.

It is further argued that Norrell's testimony, in favor of defendants, is not to be believed, because he was induced by Streeter (the gentleman who worked up these government suits) to make an affidavit in favor of the complainants. If this argument be sound what shall be said of the testimony of Lorenz Johnson, a government witness, whose testimony was taken in another case, and is wholly contradictory of his testimony here, so far as it goes? Is this the clear, convincing testimony required by the court in this class of cases? Is this the evidence equivalent to the testimony of two witnesses required to over-

come the sworn answer, and the clear and explicit denial of defendant James Stinson in his testimony?

It is respectfully submitted that the judgment of the court of appeals should be affirmed and the bill dismissed.

R. M. BASHFORD,
Solicitor and of Counsel for Appellees.

JOHN C. SPOONER AND
A. L. SANBORN,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1904.

No. 153.

THE UNITED STATES,
Appellant,

vs.

JAMES STINSON, HENRY J. STINSON AND MICHAEL S. BRIGHT, AS RECEIVER OF JAMES STINSON,
Appellees.

Special Brief for Appellees.

WILLIAM E. CHURCH,
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Of Counsel for certain creditors of
James Stinson.

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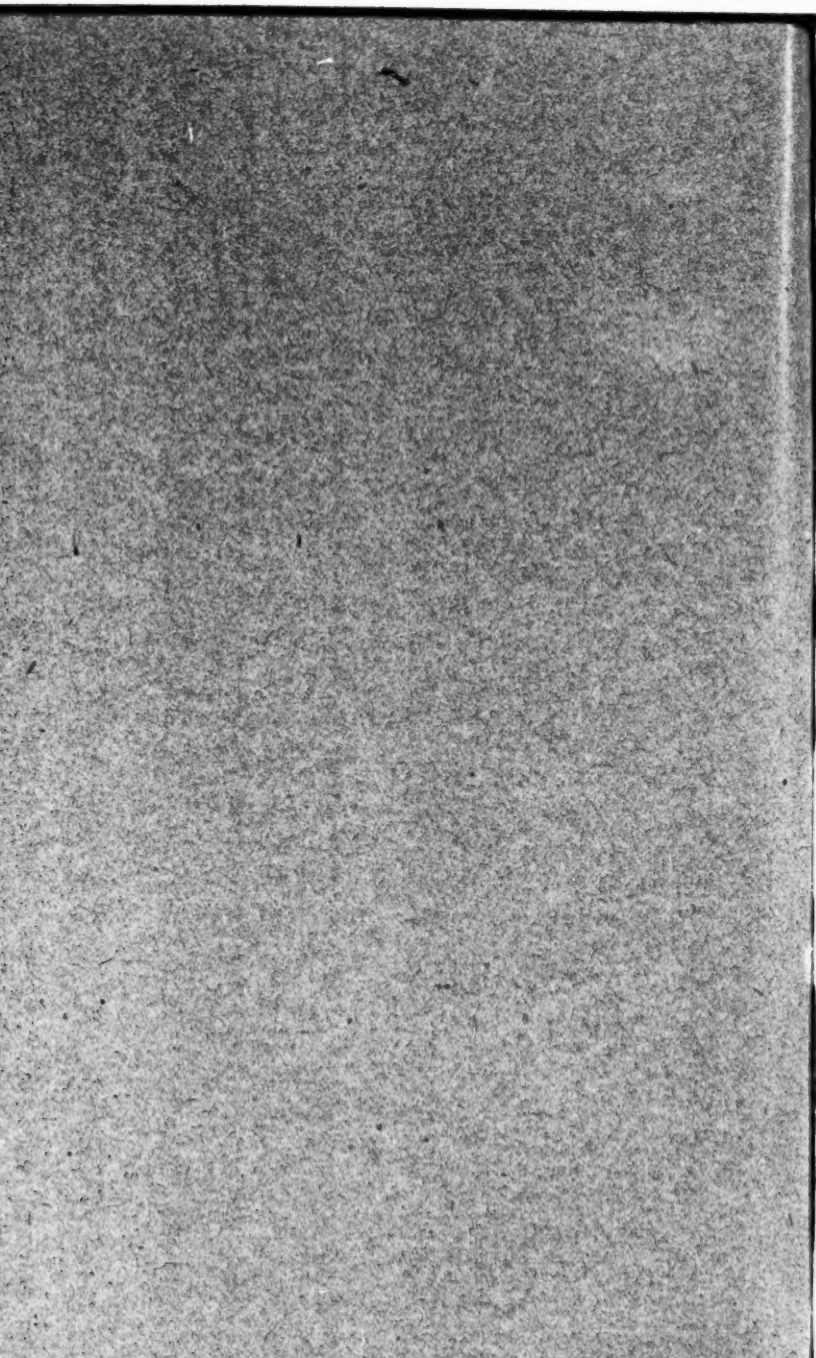

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SPECIAL BRIEF FOR APPELLEES.

In availing ourselves of the courtesy of counsel, evidenced by their stipulation on file, to file a brief on behalf of certain Canadian creditors of James Stinson in support of the decree in this case, we shall not undertake a general discussion either of the facts or the law, but having first noted the relation of these creditors to the controversy and their claims to equitable consideration, we shall endeavor to present to the Court a certain phase of the case and certain rules of law applicable thereto, which we believe will at least strongly reinforce the argument of the leading counsel for appellees.

THE RELATION OF STINSON'S CREDITORS TO THIS CONTROVERSY.

A reference to pages 488 to 491 of the transcript of record will show that the order entered by the Circuit Court in this cause April 11, 1900, permitting Michael S. Bright as receiver of the defendant James Stinson to intervene as a party defendant, was based upon the petition of said Bright, alleging, among other things, that the indebtedness of James Stinson comprises about Two Hundred and Fifty Thousand Dollars ($250,000), due to depositors at Hamilton, Ontario, besides other claims, to the amount of about Three Hundred Thirty-eight Thousand Dollars ($338,000), of which latter about Two Hundred Fifty-four Thousand Dollars ($254,000) is secured by mortgages or pledges; that, in addition to this indebtedness, there is about Two Hundred Thousand Dollars ($200,000) due and unpaid for taxes upon the lands of Stinson, and that the lands embraced in this controversy constitute the main part of the assets available for the payment of his creditors, so that if it be finally decided that the patents for these lands must be set aside, the unsecured creditors will receive little or nothing upon their claims. These allegations are found by the Circuit Court to be true. It is obvious, therefore, that this controversy is one in which the parties most vitally interested for the defense are the unsecured creditors of James Stinson.

The character of this indebtedness does not very clearly appear in the record, but as to the Hamilton creditors whom we represent, it is perhaps sufficiently indicated by the word "*depositors*" to justify the court in presuming what the record in the receivership shows, that it comprises the claims of a large number of small depositors in a private bank owned by Stinson.

While these facts may not be sufficient to place these creditors in the category of *bona fide* purchasers, yet it is submitted that in view of the very long period which has been permitted by the government to elapse before the assertion of its present claims, they do raise strong equitable grounds for assimilating the position of these creditors to that of *bona fide* purchasers without notice, and for not depriving them of these lands unless the court shall find itself compelled to such a decree by considerations from which it can not escape. If not in a technical sense *bona fide* purchasers, they are within the spirit and reason of the rule upon which the equitable doctrine of protection to *bona fide* purchasers is founded. They are innocent creditors.

We now pass to a consideration of certain legal aspects of the case as it is here presented.

The Present Contention of the Government.

The grounds upon which it is now contended by counsel for the government that the decrees of the lower courts should be reversed and a decree entered by or under the direction of this court, setting aside and annulling the patents in question, are that these patents were procured by means of a fraudulent agreement entered into between James Stinson and the fourteen entrymen named in the bill, by which the title to these lands was to be acquired from the United States for Stinson's benefit, and that this agreement involved two distinct, fraudulent acts or series of acts on the part of each of the entrymen, in violation of the statutes governing the acquisition by pre-emption of the public lands. These may be stated in general terms as follows:

1. False representations, and false proofs made and presented to the land office in respect of the extent and char-

acter of settlement, improvement and other requirements of sections 10 and 12 of the act of 1841.

2. The making and presentation to the register and receiver of false affidavits designed to meet the requirements of section 13 of that act in respect particularly of those provisions intended to preclude agreements for the acquisition of title by the entrymen for the benefit of some third party.

It is now claimed by counsel for the government that the evidence establishes fraudulent violations of both of these sets or series of statutory requirements.

Section 10 is substantially similar to Rev. Stat. sections 2259–61; Sec. 12 to Rev. Stat. 2263. Section 13, though similar in general purpose to Rev. Stat. 2262, differs somewhat, and we therefore give from the original so much as has any bearing on this controversy.

Section 13. That before any person claiming the benefit of this act shall be allowed to enter such lands, he shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same) that he has never had the benefit of any right of pre-emption under this act; that he is not the owner of 320 acres of land in any state or territory of the United States, nor hath he settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use or benefit; and that he has not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he might acquire from the government of the United States should inure in whole or in part to the benefit of any person except himself; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said land and all right and title to the same; and any grant or conveyance which he may have made except in the hands of *bona fide* purchasers for a valuable consideration shall be null and void.

The Case Made by the Bill.

Without discussing the evidence upon these points—for even if such a discussion were not outside of our present purpose we could not hope to add anything to what is said by the leading counsel for defendants in their brief—we desire now to call the attention of the court particularly to the rule which declares that no matter how strong may be the evidence in support of any particular fact, the court is precluded from its consideration unless it has a proper basis in the pleadings of the party in whose favor it is invoked. As said by the Supreme Court in

Washington R. R. v. *Bradley*, 10 Wallace, 299,

"It is hardly necessary to repeat the axioms in the equity law of procedure that the allegations and proofs must agree; that the court can consider only what is put in issue by the pleadings; that averments without proofs, and proofs without averments are alike unavailing."

It is believed that the allegations of the bill are insufficient to raise a distinct issue upon the question whether the entries which it is sought to annul in this case were effected by means of fraudulent representations and proofs respecting inhabitancy, settlement, improvement, and the other requirements of sections 10 and 12 of the act, and that all the evidence introduced by the complainant upon that point is wholly immaterial and irrelevant, and can not properly be considered by the court except in so far as it tends to establish the existence of an agreement between Stinson and the entrymen for the acquisition of title for his benefit, and therefore except in so far as it tends to establish a violation of the provisions of section 13 of the act.

After setting out in general terms the employment of the entrymen by Stinson to pre-empt and procure the title to these lands for him, the bill proceeds to set forth in detail, in

respect of each one of these fourteen entrymen, the various steps by which it is alleged the object of this employment was accomplished. The allegations in respect of the first, John Johnson (Trans. p. 2), may be taken as representative of all the others. So far as relates to the question of settlement, improvement, etc., they are as follows:

That Johnson filed in the land office of the district wherein the lands were situated

"a written statement, describing said lands and falsely and fraudulently alleging that he had within thirty days theretofore made a settlement thereon in person, and declaring his intention to claim the same under the pre-emption laws of your orator. * * * And that within twelve months after such alleged settlement thereon he falsely and fraudulently made oath and affidavit before the receiver or register of said land district that he had made such settlement in person upon the said lands and inhabited and improved the same and erected a dwelling house thereon, and continued to reside thereon ever since the making of such settlement and cultivated a portion thereof, and that he had so resided thereon such time and so cultivated such a portion thereof as were necessary and required to authorize and entitle him then to enter the same with the register of such land office upon paying to your orators the minimum price thereof."

The rest of this paragraph relates to the affidavit submitted by the entryman under section 13 to the effect that he had never had the benefit of any right of redemption; that he was not the owner of 320 acres of land in any state or territory, and

"that he had not so settled upon and improved the last said lands to sell the same upon speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire thereto from your orators should inure in whole or in part to the benefit of any person except himself."

The bill then proceeds (page 3):

"That the defendant James Stinson, for the purpose of procuring such entry of said lands, prior to such entry thereof, in corroboration of the statements and oaths of the first said John Johnson made as aforesaid, procured the false and fraudulent affidavits of other witnesses that the first said John Johnson had so settled and resided upon and improved the said lands, and filed the same with said register and receiver, and made false and fraudulent proofs of such settlement and improvement thereof by the first said John Johnson to the satisfaction of the register and receiver of said land district agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto."

It is then further averred that such false statements, oaths, affidavits and proofs were received by the said register and receiver of said land office, and by them believed to be true, and thereupon said receiver received from Johnson, and he with money of the defendant Stinson, and by his direction, paid to the receiver the minimum price of said lands, being the amount of money necessary to perfect his pre-emption claim, and the register and receiver thereupon issued him a patent certificate therefor.

Upon examining the statute, section 12, the court will observe that proof of the settlement and improvement required by the provisions of the act "shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury" (subsequently Secretary of the Interior).

Thus far it would seem that the averments of the bill in relation to the proofs of settlement and improvement are wholly insufficient in at least two respects:

1. They merely characterize the statements and proofs made and submitted by the entryman in general terms as false and fraudulent, without any specification, such as is required by the elementary rules of pleading, showing the

particulars in which they were false and fraudulent. Especially where fraud is charged is certainty of allegation required.

2. Whatever may be meant by the somewhat remarkable allegation that Stinson made false and fraudulent proofs of such settlement and improvement "to the satisfaction of the register and receiver of said land district, agreeable to the rules prescribed by law and the Secretary of the Interior relative thereto"—which would seem to imply a somewhat unwarrantable imputation upon the Secretary of the Interior, if not upon the register and receiver—in view of the circumstance that entry proofs were by the statute required to be made "agreeably to rules and regulations prescribed by the secretary," and of the further fact, of which the court will take judicial notice, that such rules were in fact prescribed, it would seem particularly necessary that the bill should specify in what particulars the proofs violated, not only the statute, but the regulations prescribed by the Secretary of the Interior. Let us see, then, if these defects and omissions are anywhere supplied.

After a repetition of the foregoing averments in substantially the same language in reference to each of the fourteen entrymen, the bill (page 19) proceeds as follows:

"That each and every and all such statements, oaths, affidavits and proofs so made in and about such pre-emption and entry and patenting of said lands, and each and every tract and portion thereof, were false and frandulent, and that the defendant James Stinson hired and procured the same to be made, and each and every of them, well knowing them to be so false and fraudulent."

Here is still nothing but what has been aptly called "mere vituperation." But now the bill proceeds:

"That neither of said persons so entering the several portions of said lands had previously thereto so settled upon, inhabited, cultivated, improved or resided upon such por-

tion thereof so claimed and entered by him, and neither ever erected a dwelling thereon, and that neither of them so claimed, pre-empted, and entered upon such portions of said lands so claimed, pre-empted and entered by them, respectively, *in good faith to appropriate the same to his own exclusive use, as the defendant James Stinson always well knew, but that each and every of them so claimed, pre-empted and entered and procured such patents to the same, and did every said act and thing by him done relating thereto, for hire, paid him by the defendant James Stinson, and as his servant, and with the intent and end and agreement, contract and understanding with the defendant James Stinson, that the title which he should so acquire thereto from your orators, should be so conveyed to the defendant James Stinson and inure to his benefit,* and that each and every act and thing so done in and about such pre-emption, entry and procuring of such patents by said persons so procuring the same, respectively, was so done by them, and each and every of them, at the instance and request, and by the procurement and direction of the defendant James Stinson."

The italics are ours.

Now we call the attention of the court to the fact that in the averments upon page 2 of the statements and affidavits which it is alleged were submitted by Johnson to the land office under the procurement of Stinson, the pleader has undertaken to follow the language of the several sections of the statute involved, and that in the averment that one of the alleged false and fraudulent affidavits stated "that he had not settled upon and improved the said lands to sell the same on speculation, but in good faith to appropriate the same to his own exclusive use," etc., the pleader was following the language of section 13, which is the section relating, not to the requirements for settlement and improvement, but to the requirement of an affidavit that what was done was in good faith for the benefit of the entryman, and not for the benefit of some third party. If now, in the light of this fact, the court will consider attentively the last paragraph which we have quoted from the bill (page 19), in

which some attempt is made to specify particulars in which the proofs submitted were false and fraudulent, it will be observed that these allegations manifestly relate, not to the proof submitted under sections 10 and 12, but to the proof submitted under section 13, as is evident from the language employed to assert the truth of the contrary proposition, that is to say: The allegation of this paragraph is in effect that these acts were not done in good faith to appropriate the land to the exclusive use of the entrymen, as Stinson always very well knew, *but* that each and every of them pre-empted and entered the land, and did every act and thing by him done relating thereto for the benefit of Stinson. If these allegations are sought to be referred to sections 10 and 12 they are plainly insufficient as specifications of fraud. It is not alleged that the entrymen never made any settlement nor that they had never cultivated the lands *at all*, etc.; the averment, grouping all these requirements together, is in the argumentative form indicated by the qualifying word "so"—alleging that neither had "so" settled upon, etc., the portion claimed by him, which naturally introduced and might perhaps be sufficient as introductory to that part of the paragraph which we have italicized, thus making it an averment that these things had not been done "*in good faith*," etc. At all events, it is only by referring them to section 13 that they have any legal sufficiency, and it was probably that section which the pleader had in mind in framing this paragraph.

This view of the intent and meaning of the bill gets further confirmation from the fact that no allusion is made in this part of the bill to the rules and regulations prescribed by the Secretary of the Interior for making proofs under sections 10 and 12, whereas, had it been the purpose of the pleader to rely upon specific frauds in respect of the require-

ments of those sections, we should expect to find, and it would seem necessary that the bill should contain, specifications of fraudulent violation or evasion of those rules and regulations.

It is therefore submitted that the only substantial basis for this bill must be found in the alleged violation of some provisions of Section 13 of the Act of 1841.

THE PROVISIONS OF SECTION 13 OF THE ACT OF 1841.

We now invite the attention of the court to this section, to its requirements, and to the penalties imposed for their violation.

So far as the provisions of this section which are involved in the present case are concerned, it is evident that they are designed to prevent anticipatory agreements for the transfer to third parties of the title to be acquired under the provisions of the act, but we desire to call particular attention to some of the features of those provisions.

1. WHAT IS THE WRONGFUL ACT DENOUNCED BY THIS SECTION?

The section does not in terms forbid the settlement of the lands for purposes of speculation nor the making of anticipatory agreements for the transfer of the title to be acquired under the Act. The particular thing against which the penalties of the Act are directed is the making of a false affidavit in respect of these matters.

It is important to note, in this connection, that there is absolutely nothing of which any *intrinsic* fraud or wrong could be predicated in those things the doing of which is here required to be disavowed by the affidavit of the entryman. It is not intrinsically wrong or fraudulent to settle upon public lands for the purposes of speculation, or to acquire the title thereto for the purpose of selling it, or to make an

agreement for the transfer to a third person of the title to be acquired by pre-emption. It is well known that these things were common before the enactment of the statute, and while it was doubtless the purpose of the statute to prevent them, this was not because they were fraudulent or wrong, but because they were against the policy which the government then adopted, in reference to the settlement and disposition of the public domain; and it must be conceded by counsel for the government, in view of the decisions cited by the leading counsel for appellees, that while an agreement for sale of the title to be acquired, made five minutes before the entry, might preclude the entryman from truthfully making the required affidavit, and if such affidavit were made, expose him to forfeiture of land and money, such an agreement, made five minutes after the entry was completed, would be perfectly valid and unassailable.

The wrongful act, then, which is denounced by this statute, is the making of a false affidavit, or, in the language of the statute, "swearing falsely in the premises."

Suppose the statute, in pursuance of a somewhat different purpose, had provided that the affidavit to be filed by the entryman should state whether or not he had made any agreement for the transfer of the title to be acquired by him, and that if he had made such an agreement, it should state the terms thereof and the person with whom made, the penalties of the statute remaining as at present; could there be any doubt that those penalties would attach, not to the making of any particular agreement, but to false swearing in respect thereof?

2. The Penalties Provided by This Section.

a. The pains and penalties of perjury. It is a criminal offense; made such by this statute.

b. Forfeiture of the money paid for the land and all right and title to the land.

c. Any grant or conveyance of the land made by the entryman except in the hands of *bona fide* purchasers and for a valuable consideration, null and void, thus exposing the grantee to the penalty of forfeiture.

Here, then, it seems to us, in the alleged violation of this statute, must be found whatever substantial basis there is for the present bill. Except for the provisions of the statute, it could hardly be claimed that the government has been defrauded of its lands. It has received all it asked for the lands, its full price, and apart from the statute, no fraud has been committed, no wrong done in the acquisition of the title. The alleged offense is *malum prohibitum*, not *malum in se*. That the framer of the bill regarded it as based upon the statute and not upon any intrinsic fraud, is indicated by the fact that no tender is made of the purchase money.

This view, we think, finds approval in what is said by the Supreme Court in the case of *U. S.* v. *Trinidad Coal Co.*, 137 U. S. 161.

That case came before the court on a demurrer to a bill filed to set aside certain patents for coal lands alleged to have been acquired in contravention of the provisions of the statute limiting the quantity of such lands which could be entered by one person or association. One ground of demurrer alleged was "that the bill is defective in not containing a distinct offer to refund the moneys which it is

alleged were furnished by the defendant to the several persons to whom patents were issued."

No forfeiture of either land or money was specifically provided by the statute upon which that bill was based, yet the court, in holding that no offer to refund was necessary, said, *arguendo*,

"The controlling object of this and similar suits is to enforce a public statute against those who have violated its provisions. * * * According to the allegations of the bill, which are admitted to be true, the defendant is a wrongdoer against whom the government seeks to vindicate its policy in reference to the development of its vacant coal lands."

All of which applies with greater force to the present case, in which, by the express terms of the statute, the penalty for its violation is the forfeiture of lands and money. This provision is certainly not self-executing, and after patent issued it would seem that a bill in equity would be the only effective means of enforcing it.

Upon this point, then, our contention is that this bill is to be regarded as filed for the express purpose of enforcing the forfeiture declared by this section as one of the penalties provided for the offense therein denounced.

Degree of Proof Necessary.

If the foregoing view of the nature of this suit be sound, it must control the court in its consideration of the evidence by which the government has sought to establish its case; and here we invoke a rule well settled in federal tribunals, viz:

WHERE, ALTHOUGH THE PROCEEDING IS IN FORM A CIVIL ONE, THE EFFECT OF THE JUDGMENT OR DECREE IS TO FASTEN UPON THE DEFENDANT A CRIMINAL VIOLATION OF THE LAW, ESPECIALLY OF A STATUTE THE PENALTY FOR WHICH IS PUN-

ISHMENT AS FOR A CRIME OR A DIRECT FORFEITURE OF PROPERTY, OR BOTH, OR SPECIAL STATUTORY DAMAGES, THE COMPLAINANT, WHETHER THE GOVERNMENT OR A PRIVATE PERSON, MUST ESTABLISH ITS CASE WITH THE SAME DEGREE OF CERTAINTY WHICH IS REQUIRED IN CRIMINAL PROCEEDINGS. THE PRESUMPTION OF INNOCENCE MUST BE OVERCOME, NOT MERELY BY A PREPONDERANCE OF THE EVIDENCE BUT BY PROOF WHICH LEAVES NO REASONABLE DOUBT OF GUILT.

We are aware that in the state courts there has been and undoubtedly is much contrariety of opinion upon this proposition, yet some of these tribunals hold with great strictness to the rule above stated.

Thayer v. *Boyle*, 30 Me. 475.

Trespass for willfully and maliciously setting fire to and burning and destroying plaintiff's barn with its contents. Action brought under a statute prescribing punishment in the county jail and by fine, and also liability to the person injured in treble damages.

The presiding judge instructed the jury that in examining the case they should decide upon the balance of testimony as in other civil cases, and that the defendant was not entitled to a verdict in his favor upon merely raising a reasonable doubt, as would be the case in a criminal prosecution. Verdict for plaintiff, and defendant appealed. The Supreme Court, after holding that the remedies provided by this statute were entirely irrespective of the penalties provided by the criminal code for the offense of arson, proceeded to consider the instruction of the trial court as to the *quantum* of proof necessary, and among other things said (page 483):

"The case of *Oliver* v. *Gibson*, decided by this court in 1847, was a suit under the statute for willfully disclosing falsely as a debtor who had given a bond to his creditor

upon arrest on execution. It was held that the jury could not return a verdict in favor of the plaintiff unless the evidence of false swearing in the disclosure was such as is required on the trial of a person indicted for perjury, although the jury may have been satisfied, without such amount of evidence, that the defendant was guilty."

"The defendant was charged with having willfully and maliciously done acts constituting an aggravated offense against society and the laws of the land. If prosecuted criminally he was exposed to be deprived of his liberty. If held responsible in this form of prosecution, the penalty in the way of damages is a sum equal to three times the value of the property destroyed. The effect upon his reputation and standing in the community by a recovery in this case, would be perhaps very little less than upon conviction for the same on indictment. Until legally proved guilty to the satisfaction of a jury, he is shielded by the presumption of innocence. This protection can not be taken away by evidence establishing only a probability of guilt, however strong that probability may be, if it amounts to nothing more. A preponderance of proof which does not satisfy the mind can do nothing further than to render the fact in controversy probable. To dislodge the presumption of innocence, the plaintiff was bound to satisfy the jury of the truth of the charge. We have seen that this was not done so long as a reasonable doubt remained in their minds. On this branch of the case the instructions were not so favorable as the defendant had a right to require. Exceptions sustained."

Laughran v. *Kelly*, 62 Mass. 199.

We quote from the syllabus:

"A special action on the case under the statute against one summoned as trustee in foreign attachment for knowingly and willfully answering falsely upon his examination on oath, can not be maintained on the testimony of one witness only, to the falsity of the answer, but the same amount of evidence is required as would be necessary to convict the defendant of perjury."

The report does not disclose the penalty, but from an examination of the statute it appears that it was the amount of the debt.

The trial court had instructed the jury that if they were

satisfied beyond a reasonable doubt on the testimony of one witness only, that the answer of the defendant was knowingly and willfully false, it was sufficient to warrant a verdict of guilty. The defendant, on the other hand, had requested the judge to instruct the jury that he could not be proved guilty by the testimony of one witness only, and this was refused.

The court say:

"By reference to the statute it will be found that it is a special action on the case, the gist of which is the false answer under oath of the defendant, knowingly and willfully made in his examination on the trustee process. Upon the proof of this falsity, the right of the plaintiff to recover entirely depends, and if proved, the defendant is rendered liable to consequences which are highly penal."

The court then proceeds to consider the question at greater length than permits of quotation, and the verdict was set aside.

In this Court this rule was long ago recognized.

U. S. v. *The Burdett*, 9 Peters, 682.

Information filed against the brig Burdett, alleging her to have been forfeited to the United States for a violation of the registry acts, she being owned in whole or in part by a subject of the King of Spain. The vessel had been purchased by an agent of Steever, a citizen of the United States, and by him sent to Havana, where she was placed under the direction of one Carrera, a merchant of that place, who directed her voyages, professing to act as Steever's agent. The vessel having been attached, Steever filed a claim in which he alleged that the brig was originally built in North Carolina, purchased by him of the original owner and thereupon registered in his name as sole owner, he being a citizen of the United States, and denied that she

was owned in whole or in part by Carrera or any other foreigner.

The court said, page 690:

"The object of the prosecution against the Burdett is to enforce a forfeiture of the vessel and all that pertains to it for the violation of a revenue law. This prosecution, then, is a highly penal one, and the penalty should not be inflicted unless the infractions of the law shall be established beyond reasonable doubt. That frauds are frequently practiced under the revenue laws can not be doubted, and that individuals who practice these frauds are exceedingly ingenious in resorting to various subterfuges to avoid detection is equally notorious, but such acts can not alter the established rules of evidence which have been adopted as well with reference to the protection of the innocent as the punishment of the guilty."

The court then considers some of the evidence and says:

"These facts and others which are on the record do authorize a suspicion that the vessel was purchased in the name of Steever for the benefit of Carrera, and we think the proceeding instituted by the district attorney in this case was justified from the facts which have been developed.

"But the inquiry now is not whether the prosecution was properly instituted, but whether the evidence makes out a forfeiture in such terms as to require its enforcement by the court.

"Admitting the facts which have been stated as creating suspicion, are they conclusive? * * * No individual should be punished for a violation of a law which inflicts a forfeiture of property unless the offense shall be established beyond a reasonable doubt. This is the rule which governs a jury in all criminal prosecutions, and the rule is no less proper for the government of the court when exercising a maritime jurisdiction.

"After a full and mature examination of the facts in this case, while we admit the acts of declarant are not clear of suspicion, we are forced to the conclusion that the evidence does not authorize a forfeiture of the vessel."

Chaffee v. *U. S.*, 18 Wallace, 516.

Action of debt to recover the penalty prescribed by section 48 of the Revenue Act of June 30, 1864, against the

defendants for having in their possession certain distilled spirits for the purpose of sale, with design to avoid the duties imposed thereon.

The court in considering exceptions taken to the charge to the jury said (page 544):

"These are directed principally to the error which pervades the whole charge, consisting in the instruction reiterated in different forms that after the government had made out a *prima facie* case against the defendants, if the jury believed the defendants had it in their power to explain the matters appearing against them and did not do so, all doubt arising upon such *prima facie* case must be resolved against them. * * * 'In determining, therefore, in the outset,' said the court to the jury, 'whether a case was established by the government, you will dismiss from your minds the perplexing question whether it is so made out beyond all doubt. It need not, in the exigencies of this case be so proved, in order to throw the burden of explanation upon the defendant, if, from the facts you believe he has within his reach that power. In the end, all reasonable doubt must be removed, but here at this stage you need say only, is the case so far established as to call for explanation? * * * If, then, you conclude that unexplained and uncontroverted by any testimony the opening proof would enable you to find against the defendants for the claim of the government or any material part of it, you will then take up their testimony in view of the principle' stated, that of presuming against a party who fails to produce proof in his possession. * * * The purport of all this was to tell the jury that although the defendants must be proved guilty beyond a reasonable doubt, yet, if the government had made out a *prima facie* case against them, not one free from all doubt but one which disclosed circumstances requiring explanation and the defendants did not explain, the perplexing question of their guilt, need not disturb the minds of the jurors. Their silence supplied in the presumptions of the law, that full proof which should dispel all reasonable doubt. In other words, the court instructed the jury, in substance, that the government need only prove that the defendants were presumptively guilty, and the duty thereupon devolved upon them to establish their innocence, and if they did not they were guilty beyond a reasonable doubt. * *

* The instruction sets at naught established principles. Judgment reversed and new trial ordered."

U. S. v. *Shapleigh*, 54 Fed. 126 (4 C. C. A. 237).

Section 5483, Revised Statutes, defines the offense of making a false claim against the government or supporting a claim by false proofs, and provides the punishment of fine and imprisonment for the commission of such offense.

Section 3490 gives the United States a civil action against the offender to recover a forfeiture of $2,000 and double damages.

In this case an action was brought under the latter section. The opinion of the court contains an interesting and careful review of the authorities on the question as to the degree of proof required in such cases, and concludes by affirming the rule to be substantially as we have above stated it.

U. S. v. *Budd*, 144 U. S. 154.

A bill was filed to set aside patents obtained under the provisions of the "Timber and Stone" act of June 3, 1898 (20 Stat. at L. 89). Section 2 of that act contains provisions practically identical with those of section 13 of the Preemption Act of 1841, now under consideration. The patent was issued to Budd, who conveyed to Montgomery. Both were made defendants, and it was sought to annul the patents on these grounds: 1, a combination between defendants to obtain the title for Montgomery; 2, false proofs as to the character of the land.

The particular proposition which we contend for was not presented in that case, but the court, after quoting the language of Mr. Justice Miller in the case of *U. S.* v. *Maxwell Land Grant Co.*, 121 U. S. 325, says:

"This case is even stronger in its aspects than some that have been before us, for if the particular wrong charged

upon the defendants be established, the money paid is by the second section of the act forfeited, and there is not even the possibility suggested in the case of *U. S.* v. *Trinidad Coal Co.*, of an equitable claim upon the government for its subsequent re-payment. The hardship of such a result, so different from that which is always enforced in suits between individuals, makes it imperative that no decree should pass against the defendants unless the wrong be clearly and fully established."

In this same case occurs another expression by the court which, although not directly bearing upon the immediate point now under consideration, is nevertheless of much importance in connection with the general question as to the necessary degree of proof, as discussed by the counsel for the respective parties in their briefs.

Answering a suggestion of counsel as to the existence of certain presumptions of law, and denying their application to that case, the court said at the outset of its discussion of the point:

"The charge is that Budd made a prior agreement with Montgomery. When Budd made his application he filed an affidavit, swearing that he had made no agrement with any one. *This is one denial under oath of the truth of this charge.* In the bill as filed, answers under oath were called for, and Budd and Montgomery each filed an answer under oath denying specifically the existence of any such prior agreement, and an answer under oath in an equity case, when called for, is to be taken as evidence."

The point to which we particularly invite attention here is that in the judgment of the court the very affidavit, the falsity of which is alleged in the bill and must be proved in order to sustain it, is itself to be regarded as evidence for the defendants—a denial under oath of the truth of the charge—and as such to be overcome by proof. *Therefore in the case at bar there are fourteen affidavits—the sworn testimony of fourteen witnesses—denying the truth of the charges in the bill,* lying at the very threshold of the case, in addition to the

sworn answers of the defendants, to be overcome by complainants. This is as though complainant had made all the entrymen parties defendant, called for their answers on oath, and been met by sworn denials of the allegations of the bill.

To return to the proposition immediately under discussion.

Such being the rule as to the degree of proof necessary to establish the case of the government, it will hardly be contended that its requirements are met by the evidence relied upon in the present case. If anything were needed to add emphasis to the propriety of its application in this case it would be supplied by the circumstance so fully considered in the brief of the leading counsel for appellees, that upward of forty years elapsed between the acts complained of and the production of the evidence by which their unlawful character was sought to be established. It ought to be regarded, judicially, as a pretty strenuous task to convict fourteen men of perjury and one of subornation of perjury in the same case after the lapse of forty years. The law governing the prosecution of criminal offenses at that time precluded any attempt to do so after two years.

But it may be urged that this suit is not brought against the original entrymen but against their transferee and that if any forfeiture of the lands is decreed they will not be the sufferers.

The reply seems to us obvious. Stinson is charged to have procured the alleged false proofs to be made, and to have acquired title by means of such false proofs. These entrymen, having conveyed to him by warranty deeds, would have been at least proper parties to suits to set aside their entries and patents (*U. S.* v. *Budd*, *supra*,) though possibly had they all been parties to this suit it would have exposed

the bill to the objection of multifariousness. The specific charge is that they were guilty of perjury and Stinson of subornation of perjury. Why should the government, by merely omitting to make them parties to the proceeding by which it seeks to set aside their entries and patents, escape the necessity of establishing its case by as satisfactory proof as if they were parties? Or, to put it in another way, why should less proof be necessary to fasten upon them the guilt of perjury and to enforce the statutory forfeiture against their transferee in a proceeding to which they are not parties than would be required in a proceeding to which they were parties? The provision that in case of false swearing on the part of the entryman every grant or conveyance of the land made by him shall be void, necessarily brings the grantee within the scope of the act, since it is upon him that the forfeiture must directly operate. The right of the government to enforce the forfeiture depends upon the commission by the entrymen of specific acts of perjury charged in the bill, while in the present case there is superadded the necessity of proving that all was done by Stinson's procurement and we can conceive of no just reason why the rules of evidence should be modified by the omission to bring the entrymen before the court as parties defendant.

The Question of Laches.

Upon this question we desire to call the attention of the court to two statutes, which, we think, have an important bearing upon its determination:

1. We have already endeavored to show that whatever may have been the original intention of counsel for the government in instituting this suit, as to the grounds upon which they would seek the relief prayed for, to wit, that the

patents, certificates and entries of the land, and the patents issued, be delivered up to be canceled, set aside and annulled (Trans. p. 21), as the case actually stands, it must be regarded as brought to enforce the penalty or forfeiture prescribed by section 13 of the act of 1841 for swearing falsely in respect of the matters enumerated in that section.

By Section 1047 of the Revised Statutes it is prescribed:

"No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained * * * unless the same is commenced within five years from the time when the penalty or forfeiture accrued."

At a very early date it was declared by this Court, in construing this statute in its then form, that it applied to civil actions or proceedings for the enforcement of penalties and forfeitures.

Adams v. *Woods*, 2 Cranch, 336.

This was an action of debt *qui tam*, brought to recover a penalty imposed by the act prohibiting the slave trade. The statute being pleaded, a demurrer was filed to the plea and it was contended that the statute only applied to criminal proceedings.

The court said, sustaining the plea:

"In expounding this law it deserves some consideration that if it does not limit actions of debt for penalties, those actions might in many cases be brought at any distance of time. This would be utterly repugnant to the genius of our laws. In a country where not even treason can be prosecuted after a lapse of three years it could scarcely be supposed that an individual would remain forever liable to a pecuniary forfeiture."

U. S. v. *Maillard*, 4 Ben. 461.

This was a suit to recover the penalty prescribed by R. S., Sec. 2839, for not invoicing merchandise according to the actual cost at the place of exportation, with design to evade pay-

ment of duties; the penalty being the forfeiture of the merchandise or of the value thereof, to be recovered of the offender. This statute was pleaded as a defense. The government replied:

a That the statute did not apply.

b. That the falsity of the valuation having been fraudulently concealed, the statute did not run until the fraud was discovered. Both of these contentions, however, were overruled by the court. Here, it will be observed, the forfeiture was incurred by swearing falsely to an affidavit for the entry of merchandise for duties. In the case at bar the forfeiture is incurred by swearing falsely to an affidavit for entry of land for patent.

Section 2864 provides in more general terms a similar forfeiture for like offenses.

U. S. v. *Tithing-yards*, 9 Utah, 273.

This was a suit brought by the United States to forfeit certain property acquired and held by the defendants in violation of a statute prohibiting religious corporations from acquiring and holding real estate of a value exceeding $50,000. This statute was pleaded in defense. It appeared that the title to the property had been acquired by the corporation more than five years before suit brought, and it was contended that the statute began to run from the date of such acquisition, but the Supreme Court of Utah held that the prohibition being against acquiring *and holding* and it being conceded that the defendant had continued holding the property at a date within five years before the beginning of the suit, the bar of the statute was not complete.

The foregoing cases are cited to illustrate the applications which have been made of this statute.

2. Section 8 of the act of March 3, 1891, entitled "An

Act to repeal the timber culture laws, and for other purposes" (26 Stat. at L., p. 1093) provides as follows:

"That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

A hasty reading of this statute might convey the impression that this section applied only to entries under the timber culture laws, but a more careful examination will show that it applies also to homestead, desert land and preemption entries.

Without insisting that either of the above quoted statutes can now be urged as a bar to this suit, it is submitted that the evidence which they furnish of the intention of the sovereign to place a limit of five years upon its own right to prosecute suits of this character, where the forfeiture of property is the object sought to be attained, may well be regarded by this court as ample justification for denying the complainant a decree in this case, brought forty years after the issuance of patents. Under neither of these statutes can delay be excused on the ground of the concealment or non-discovery of a cause of action. The limitations imposed by both statutes are absolute, and the court may well accept these legislative limitations as a safe guide in the disposition of this case, especially in view of the very large interests of innocent creditors involved therein.

Respectfully submitted,

WILLIAM E. CHURCH,
ROBERT MCMURDY,
ROGER SHERMAN,
Of Counsel for Certain Creditors of James Stinson.

Supreme Court of the United States.

No. 153.—October Term, 1904.

The United States, Appellant, vs. James Stinson and Henry J. Stinson, and Michael S. Bright as Receiver of James Stinson.	Appeal from the United States Circuit Court of Appeals for the Seventh Circuit.

[March 13, 1905.]

This suit was commenced in the Circuit Court of the United States for the Western District of Wisconsin on February 25, 1895, to set aside the patents for fourteen quarter sections of land, charged to have been fraudulently acquired by the defendant James Stinson. The lands were entered under the pre-emption laws in 1854–1855, by different individuals, and immediately thereafter conveyed by them to James Stinson. The Government, as admitted, received one dollar and twenty-five cents per acre, the statutory price for lands so entered. The frauds charged are that the entrymen did not occupy and improve the lands as required by law, and did not enter them for their own benefit, but were employed by James Stinson to make the entries; that he paid the purchase price to the Government, and also paid the entrymen for their services, and thus, in defiance of the provisions of the statutes, obtained title to the lands. James Stinson in his answer, under oath, denied specifically the alleged frauds. Quite a volume of testimony was taken. Upon this the District Court found that it was not true as alleged that James Stinson had been guilty of fraud in obtaining the title to the lands, and dismissed the bill. This dismissal was affirmed by the Circuit Court of Appeals, (125 Fed. Rep, 907; 60 C. C. A. 615,) from whose decree the United States appealed to this court.

Mr. Justice Brewer delivered the opinion of the Court.

While the Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded, and while laches or limitation do not of themselves constitute a distinct defence as against it, yet certain propositions in respect to such an action have been fully established. First, the respect due to a patent; the presumption that all the preceding steps required by law have been observed before its issue; the immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside or annul them should be sustained only when the alle-

gations on which this is attempted are clearly stated and fully sustained by proof. *Maxwell Land Grant Case,* 121 U. S. 325; *Colorado Coal Company* v. *United States,* 123 U. S. 307; *United States* v. *San Jacinto Tin Company,* 125 U. S. 273; *United States* v. *Des Moines &c. Company,* 142 U. S. 510; *United States* v. *Budd,* 144 U. S. 154; *United States* v. *American Bell Telephone Company,* 167 U. S. 224.

Second. The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend the prosecution of a like action by an individual. "It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful." *Maxwell Land Grant Case, supra,* p. 381; *United States* v. *Iron Silver Mining Company,* 128 U. S. 673, 677; *United States* v. *Des Moines &c. Company, supra,* 541.

Third. It is a good defence to an action to set aside a patent that the title has passed to a *bona fide* purchaser, for value, without notice. And, generally speaking, equity will not simply consider the question whether the title has been fraudulently obtained from the Government, but also will protect the rights and interests of innocent parties. *United States* v. *Burlington & Missouri River Railroad Company,* 98 U. S. 334, 342; *Colorado Coal Company* v. *United States, supra,* 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

"But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone the defence of a *bona fide* purchaser for value without notice is perfect." *United States* v. *Marshall Mining Company,* 129 U. S. 579, 589; *United States* v. *California &c. Land Company,* 148 U. S. 31, 41; *United States* v. *Winona &c. Railroad Company,* 165 U. S. 463, 479.

Waiving any inquiry as to the claim of ignorance on the part of the Government in respect to the matters complained of until shortly before suit, and simply noting the fact that there was fragmentary testimony tending to show notice at about the time of the entries sufficent to put upon the Government the duty of inquiry, we pass to consider the merits of the case. Forty years intervened between the time of the alleged fraud and the commencement of this suit. Six at least of the fourteen preemptors were then dead. One of the living was shown to be quite old and to have failed in health and memory. Only four were called as witnesses; two by the Government and two by the defendant. The evidence of the former tended to sustain the allegations of fraud and that of the latter supported the denial of the defendant. At such a lapse of time it is not strange that the memory of all the witnesses should be of

doubtful reliability. They might remember the general fact that they entered the land and that they received some money out of the transaction, but the details, the various acts and conversations, might well be forgotten. There is nothing to show that their attention was ever called to the matter during the intervening time, nothing transpired which would induce them to fix their memories upon any particular facts. Even the testimony on behalf of the Government shows that they believed that they were engaged in a legitimate effort to obtain title to the lands, and expected to make profit out of them. They naturally took the steps in reference to occupation and improvement which they were advised were sufficient, and having paid for the land supposed that everything was rightfully done. The conduct of defendant Stinson does not indicate a consciousness of wrongdoing. He remained a resident of the locality, the title was not transferred, there was no attempt to place it in the hands of a *bona fide* purchaser; no such conduct as would ordinarily characterize a conscious wrongdoer. He came to Superior when it was a mere village, interested himself with others in the building up of a city, having faith in its future. The money which was invested in these lands was his father's, and he took the title in his own name, but really in trust for his father. Subsequently he became the owner of part or all, and retained the title until after this suit was brought. The lands at the time of the entry were in the forest, with only scanty population within a reasonable distance, and apparently were worth no more than the purchase price. Now that Superior has grown to be a city they have increased largely in value. He engaged in financial operations, contracted debts on the strength of a responsibility based upon the ownership of these lands, and finally he became so deeply in debt that the property passed into the possession of a receiver appointed at the instance of his creditors. Although the latter may not be technically a *bona fide* purchaser, yet he holds the lands for those who have dealt with the defendant Stinson, on the faith of his ownership, and they are equitably entitled to protection.

Further, the Circuit Court, on its review of the testimony, found that there was no fraud and decreed a dismissal, and that finding and decree were approved by the Court of Appeals. While such a finding is not conclusive upon this court, yet it is entitled to ~~receive~~ great consideration, and ~~will~~ not be disturbed unless plainly against the testimony.

Putting all these things together, we are of the opinion that the decree of the Circuit Court was right, and it is

Affirmed.